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WEK'EEZHII LAND AND WATER BOARD

PUBLIC HEARING

BHP BILLITON SABLE, PIGEON, BEARTOOTH DEVELOPMENT

Panel Members:

Chairperson	Violet Camsell- Blondin
Member	Rita Mueller
Member	Mike Nitsiza
Member	Joe Rabesca

HELD AT:

Culture Centre
Behchoko, NT
March 5th, 2009
Day 2 of 2

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18 Kevin O'Callaghan) Legal counsel

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21 David Livingstone)

22 Nathen Richea)

23 John Brodie)

24 Barry Zajdlik)

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11) Alliance
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	TABLE OF CONTENTS	
		Page No.
1		
2		
3	List Of Undertakings	5
4		
5	Opening Comments	6
6		
7	Presentation by INAC	18
8	Question Period	70
9		
10	Presentation by NSMA	85
11	Question Period	99
12		
13	Public Comments	105
14		
15	Closing comments by IEMA	115
16	Closing comments by EC/DFO	117
17	Closing comments by INAC	118
18	Closing comments by NSMA	122
19	Closing comments by BHP Billiton	123
20	Closing comments by The Board	119
21		
22	Reporter's Certificate	139
23		
24		
25		

	LIST OF UNDERTAKINGS		
	No.	Description	Page No.
1			
2			
3	3	Barry Zajdlik from INAC to provide	
4		information as to what increases	
5		in nitrate have resulted in	
6		demonstrable acts in the receiving	
7		environment with respect to	
8		phytoplankton biomass	51
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
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1 --- Upon commencing at 9:05 a.m.

2

3 THE CHAIRPERSON: We will call this
4 Hearing open again. We will open with a prayer, as we
5 customarily do. I see we have nobody from the public to
6 assist us, so I will ask our Board member, Mike Nitsiza,
7 to do an opening prayer for us.

8

9 (OPENING PRAYER)

10

11 THE CHAIRPERSON: Mahsi, Mike. We have
12 our revised agenda. I think that was circulated to
13 everyone this morning. I will just briefly read out what
14 the revised agenda is.

15 We are going to start with the INAC
16 presentation, followed by questions from all the
17 Intervenors. Then we will go for a break.

18 We will have a presentation for North
19 Slave Metis Alliance following that and questions from
20 the Intervenors. And we have the public to provide
21 comments. If we receive no comments from the public,
22 then we will have lunch following that. So we may have
23 an early lunch or something.

24 Then we will follow by closing comments.
25 I understand that people want some time for closing

1 comments, so we will break for closing comments, and the
2 Chair's closing comment, and then we will end with a
3 closing prayer.

4 So this morning we will start up with
5 INAC's presentation.

6

7 (BRIEF PAUSE)

8

9 PRESENTATION BY INAC:

10 MR. DAVID LIVINGSTONE: All right, I
11 guess we're ready to go. Thank you, Madam Chair. I'm
12 David Livingstone. I'm the Director of Renewable
13 Resources and Environment for Indian and Northern Affairs
14 in Yellowknife.

15 And I'll introduce the -- the team that
16 I've got with me today, and then we'll get into the
17 presentation, but before we do that, I'd just like to
18 mention a conversation I had with Laura Tyler a week or
19 so ago, prior to this hearing.

20 And -- and we talked a little bit about
21 what we could expect. And Laura said, Ah, it'll be fun.
22 It'll be fun, David. So, Laura, I remember that and I'm
23 going to hold you to it. It's going to be fun.

24 And it -- I mean, after all, we're --
25 we're here to -- to put the issues on the table and --

1 and discuss them in a -- in an open and -- and friendly
2 way and -- and help the Board makes its decisions.

3 And -- and the Board is, as usual, faced
4 with a number of -- of different perspectives and -- and
5 different -- different views, in some cases different
6 values, and it's not an easy place to be. So as usual,
7 we're from DIAND, we're here to help, and -- and since
8 we're from Yellowknife, it's even more so.

9 So I'll -- I'll just introduce the team we
10 have here. Starting at my far left, John Brodie from
11 Brodie Consulting. John is familiar to the Board. He's
12 helped us on a number of occasions with the reclamation
13 security estimates.

14 To my immediate left is Robert Jenkins
15 from the Water Resources Division.

16 To my right, Nathan Richea from the Water
17 Resources Division. And then, to his right, Barry
18 Zajdlik, who's helped us with the EQC discussions.

19 And in -- in the back behind me we've got
20 a number of people, Velma Sterenberg from the Mineral
21 Division, Marc Casas from Water Resources, Lionel
22 Marcinkosy from Environment and Conservation, Julie
23 Jackson, I -- I'm not sure if Julie's here yet, from --
24 for -- from the Board Relations Unit, Consultation Unit,
25 in particular, and Heather Frederick from the Department

1 of Justice.

2 So in brief, we're going to talk about the
3 -- the EQCs, reclamation security, the amalgamated water
4 licence. We'll touch on the Crown consultation process,
5 and then we'll move into the conclusions, and it probably
6 will take us about a half an hour to go through all of
7 that.

8 So I'm going to turn it over to Barry now
9 to talk about the EQC context and -- and our
10 recommendations.

11 MR. BARRY ZAJDLIK: Good morning. It's
12 Barry Zajdlik speaking. Before I start, I wanted to say
13 that I have a personal goal for my part of the
14 presentation, and that's to facilitate some of the -- the
15 concepts that were presented here before the Board.

16 The -- it seems that a lot of the
17 disagreement between BHP and INAC, at least, is centred
18 around definitions and the use of terminology.

19 And so, unfortunately, my presentation
20 starts with some really boring definitions but they're
21 critical to understand because it really highlights where
22 some of the controversies lie.

23 The first definition is the water quality
24 guideline. It's what it is and that's just a
25 concentration that's developed by a body and it's

1 designed to protect something in the environment. There
2 are different numbers for different types of protection
3 and there are different bodies in the country that
4 generate these numbers.

5 One of the -- one of the bodies that you
6 hear about a lot in this presentation or hearing today is
7 Canadian Council of Ministers of the Environment. And
8 what they've done is look at toxicity tests. That's
9 where they take an animal and they expose it to a
10 chemical and they see what concentration kills the
11 animal.

12 And they do that with many different types
13 of animals and then using that data set they generate a
14 guideline or a number that's suppose to protect a lot of
15 the -- well, it's intended to protect all animals in all
16 environments at all times. That's the general intent of
17 the CCME water quality guidelines, for the protection of
18 aquatic use.

19 Now it's important to realize that CCME
20 water quality guidelines in the policies or in the
21 statements they also say that those numbers are not
22 suppose to be used as pollute-up-to numbers.

23 They also say that the numbers should be
24 adjusted on a site specific basis and when waters are
25 pristine, that means unpolluted or untouched, that the

1 CCME water quality guideline should also consider what is
2 naturally occurring in the -- in the receiving
3 environment.

4 So in terms of Horseshoe watershed where
5 there have been no inputs, at least no huge inputs,
6 direct inputs, from anyone other than long range
7 transport, we have to look at the CCME water quality
8 guidelines but we also have to look at what is already
9 there. And we can't just say we are going to take this
10 number and use it as a basis for measuring performance of
11 the proponent.

12 So that's a water quality guideline. It's
13 a -- in this case, it's a national number and it should
14 be adjusted to account for site specific conditions to
15 achieve a certain level of protection.

16 And that leads us to the next definition
17 which is the water quality objective. A water -- a water
18 quality objective is, again, a number but it's a number
19 that blends a variety of things.

20 In this case it blends science and science
21 here is brought into the picture by the CCME number so
22 it's a toxicity based number. But the water quality
23 objective also brings into account what people want to
24 see in the receiving environment.

25 Some people have said in meetings that

1 I've attended the past, they want to see the environment
2 be pristine. And to me pristine means unchanged.

3 Other people have said -- one (1) person
4 said yesterday that they used to make tea and they would
5 like to make tea from the water. So that is an intended
6 use of the water.

7 So what a water quality objective does is
8 balance all the desired uses of the water. BHP wants to
9 use the water to discharge effluent from the Horseshoe --
10 or, sorry, from Two Rock Lake.

11 And so the Board has the nasty problem of
12 generating a water quality objective that balances
13 natural background, because that's possibly one of the
14 intended uses -- or, sorry, that's what one (1) of the
15 persons said yesterday with respect to intended usage.

16 There is also the intended usage under the
17 MVERB document which is protection of aquatic resources.
18 And there's also the -- the intended use of the proponent
19 as a place to discharge effluent.

20 And so there has to be a balance between
21 all of these different intended uses. And that becomes a
22 water quality objective. It's a blend of science, it's a
23 blend of desired uses and it's a blend of the cost of
24 implementing mitigation strategies by the proponent. All
25 of those things are considered simultaneously to generate

1 a water quality objective.

2 The next definition is effluent quality
3 criteria. That is the concentration which is acceptable
4 in the effluent, and the effluent quality criteria is a
5 number that is generated so that the water quality
6 objective is met in the receiving environment.

7 We can get into a big argument about where
8 exactly it should be met, whether it should be at 20
9 metres, or it should be exactly at the end of the pipe,
10 but the concepts are what I'm trying to get across today,
11 right now, is that an effluent quality criterion is
12 simply a number that enables the water quality objective
13 to be met somewhere in the receiving environment.

14 BHP has proposed environmental quality
15 criteria -- or, sorry, effluent quality criteria for the
16 Sable, Pigeon -- Sable pit, and the environmental
17 effluent quality criteria that were proposed are adapted
18 from the DDMI site.

19 And, so the problem with that is that EQCs
20 must be site specific. They must reflect the receiving
21 environment, which is the Horseshoe watershed, they must
22 reflect the intended water usages, and, therefore, they
23 must be site specific.

24 You cannot simply take EQCs that were
25 developed at a different site and transfer them over.

1 That contravenes the definition of what an effluent
2 quality criterion is.

3 In the -- in the methodology to examine
4 EQCs, BHP looked at twenty-two (22) different
5 measurements that they could take in water, and they used
6 models in at least four (4) cases to predict which
7 concentrations might exceed the -- the effluent quality
8 criteria adopted from DIAVIK, and then for that -- for
9 that part they said, Okay, we cannot meet four (4) of
10 those, so we want to change the EQCs.

11 Now in -- now I'm jumping to a general
12 process for deriving EQCs. What I've said is how BHP
13 derived their EQCs. They went through, looked at what
14 could be met, decided that they couldn't reasonably meet
15 some of them, and then decided to increase, or are asking
16 to increase the numbers.

17 THE CHAIRPERSON: Excuse me, Barry.

18 MR. BARRY ZAJDLIK: There is --

19 THE CHAIRPERSON: Can you go a little bit
20 slower for the translator?

21 MR. BARRY ZAJDLIK: Yes, sorry, thank
22 you.

23 There's a general process for deriving
24 EQCs, and the process that's on the screen in front of
25 you, and on the paper in front of you, is derived from a

1 review of water policies and water use policies in
2 northwestern Canada.

3

4

(BRIEF PAUSE)

5

6 MR. BARRY ZAJDLIK: The first thing that
7 I did when I was asked by INAC to review EQCs was to
8 contact one (1) of the Board staff, and ask if the Board
9 had a policy for deriving EQCs, and the answer was, No.
10 I asked people at INAC if there was an INAC policy for
11 deriving EQCs, and the answer was, No.

12

13 So I went around the various
14 jurisdictions, the Yukon, British Columbia, Alberta,
15 Manitoba, Saskatchewan, and looked through their water
16 quality policies and the protocols for deriving EQCs.
17 And this is what I put together based on that review of
18 policies across northwestern Canada.

19

20 The first step is to decide what the water
21 uses are. The second step is to choose suitable water
22 quality guidelines and, in this case, suitable water
23 quality guidelines might be derived from CCME but I think
24 that I, at least, and possibly INAC, maintain that the
25 CCME water quality guidelines are not directly
applicable.

26

Once the water quality guideline has been

1 selected, it has to be modified to suit the site and the
2 intended usage and, through that process, a water quality
3 objective is derived.

4 The water quality guidelines are modified
5 because toxicity to organisms is affected by specifics of
6 the receiving environment. For example, the water in
7 Horseshoe Lake is very soft. It doesn't have a lot of
8 calcium and magnesium in it.

9 And the -- the reason that that's
10 important is because that metals are being discharged
11 into the Horseshoe Lake watershed and the more calcium
12 and magnesium there are, within reasonable limits, the
13 less the toxicity of metals.

14 So if we take a generic number, a CCME
15 number that's derived usually in much harder waters and
16 apply it to a place like Horseshoe Lake, those numbers
17 can be underprotective. And so it's important to adjust
18 the CCME numbers to reflect what is actually in Horseshoe
19 Lake.

20 Once a water quality objective is put
21 together -- and that's the challenge the Board faces, is
22 generating this number that reconciles many different
23 people's intended usage and science -- then an EQC has to
24 be estimated. And that's when models or plume studies
25 can come in because we have to understand how the

1 effluent is diluted in Horseshoe Lake so that the water
2 quality objective is met within a reasonable distance of
3 the discharge point.

4 In the next slide, I'm focussing on one
5 specific component of the effluent quality criteria and
6 derivation process. This is the biggest challenge in
7 deriving an effluent quality criterion.

8 First of all, there's -- we have to
9 consider the usage. There's a proponent who has an
10 intended use. There's the environment itself which is
11 the animals that live there and the plants that live
12 there are using this environment. That's their home,
13 they live there, and so they use it in that sense.

14 And there's long-term users, the people
15 that are going to be on the land after the proponent's
16 left, and the Canadians of future generations. These are
17 all uses that have to be considered when generating a
18 water quality objective.

19 One of the things that has to be done is
20 balance the cost of treatment with preservation of the
21 intended usage. There's -- it's obvious that a
22 development such as BHP brings benefits to northern
23 communities.

24 And the question is, in the water quality
25 objective problem, is balancing those benefits with

1 protection of the environment and so we need to
2 understand what the costs, the financial costs are of
3 protecting the environment.

4 Also site specific factors that affect
5 toxicity have to be considered and I've already mentioned
6 water hardness which is a measure of calcium and
7 magnesium largely. There are other things as well, like
8 pH, that affects the -- the water quality guidelines and
9 how they're modified. Temperature is also a factor.
10 When all of those things are considered simultaneously,
11 blending science, intended use and cost, we've created a
12 water quality objective.

13 So that's the problem that the Board is
14 faced with generating a water quality objective. We have
15 specific recommendations and comments on some of the
16 proposed changes to the EQCs but the bottom -- the
17 overarching picture and the big statement that I would --
18 I would like to make is that there is a process for
19 generating effluent quality criteria.

20 We're not sure that the process was
21 followed and there certainly -- certainly in my mind, the
22 process was not followed. We have questions and more
23 questions yet as to how the EQCs were derived. And that
24 leads us to our recommendations with respect to the
25 specific EQCs that BHP has proposed to change.

1 MR. DAVID LIVINGSTONE: All right,
2 thanks, Barry. I'm just going to summarize in my own
3 words what Barry is trying to get at. And I think he did
4 a good job of that.

5 But this -- this whole business of setting
6 EQCs is -- is a mix of science and values. There's no
7 absolute in either one of those. It can give you numbers
8 as -- as we've talked about before. If the -- if the
9 people in whose backyard this activity is taking place
10 decide on the objective, the water quality objective, the
11 scientists can tell you how to get there more or less.

12 There would be some uncertainty and that's
13 why you need a monitoring program and so on to ensure
14 that the effects are what -- what are predicted and the
15 treatment is, whatever the treatment is, is having the
16 desired effect.

17 But the science is always changing and
18 values are changing too. There's no constant in any of
19 this stuff. And it's always a moving target.

20 The principle that -- that I think most of
21 us try to live by is continuous improvement. It's not
22 good enough to say, in my view at least, it's not good
23 enough to say, well, that's the way it's been done
24 before. We don't have to try any harder, we don't have
25 to -- to make any improvements because that's the way

1 it's been done before and that's good enough.

2 We can always do better. We need to
3 understand the implications of doing better but we can't
4 just sit back and say, well that's -- that's the way it
5 is and that number in this particular case is the number
6 that was set before so that's good enough.

7 And there's -- there's onus on all parties
8 to -- to take the necessary steps and I'll -- I'll say
9 for the record that -- that DIAND is one of those parties
10 and -- and we, I don't think, have done enough to help in
11 this particular case and -- and we'll do better in this
12 particular instance as soon as we can. But the onus is
13 not just on DIAND to prove that the number is wrong.

14 The onus is on the proponent to prove that
15 the number is right, equally so, and we all share that
16 responsibility. The -- the best answer today is not
17 necessarily the appropriate answer for tomorrow.

18 These things are always moving. The EQCs
19 are not fixed in time forever. They're -- they're only
20 as good as the science and the values dictate. It can be
21 changed tomorrow if -- if the science or the values
22 change substantially to require that change.

23 So in -- in that sense I suppose EQCs can
24 be considered interim at any time. They're always
25 interim in the sense that they can always be changed if

1 the evidence is there and the need is there to change
2 them.

3 So with that, I'll move to the -- the
4 first recommendation, nitrate. DIAND feels that -- that
5 nitrate is, well, as everybody knows, it's just one (1)
6 of the nutrients and that it -- it should be included as
7 an EQC to just -- to be sure that -- that we have covered
8 all of the potential nutrient enrichment constituents
9 that could enter the system.

10 We're taking a precautionary approach here
11 we understand that. We understand that there are other
12 opinions out there that -- that it's probably okay not to
13 and monitoring is -- is enough. We don't necessarily
14 agree with that and we'd like to see a more precautionary
15 approach taken.

16 Barry, if you want to add to that, go
17 ahead.

18 MR. BARRY ZAJDLIK: Barry Zajdlik again.
19 We had some specific comments as to why we disagree with
20 the nitrate number. First of all, the -- the number that
21 was brought forward by BHP was generated or is -- is a
22 number known as an ideal performance standard.

23 And in that case, in that phrase, the word
24 "performance" refers to agricultural performance. These
25 numbers were generated under a national agricultural and

1 environmental strategic initiative.

2 When you read through the purpose of these
3 numbers that were generated, it is to -- in the same way
4 that we talked about water quality objectives reconciling
5 intended use and best available technology, the numbers
6 generated as ideal performance standards look at best
7 agricultural practices and they look at the receiving
8 environment and say that if we can do these things
9 agriculturally, we can balance the costs of doing --
10 conducting -- or doing agriculture with protecting the
11 environment.

12 And so that's how those numbers are
13 supposed to be applied in an agricultural context for
14 agricultural lands. The numbers are not CCME water
15 quality guidelines. They are NACE (phonetic) numbers.
16 If we get technical and we look at the derivation of the
17 NACE numbers, the ideal performance standards -- and I --
18 I'm a -- I'm an author in that series of documents along
19 with the ammonia -- or, sorry, the nitrate document.

20 I understand the process used to derive
21 the nitrate number and the inputs to the data sets that
22 are used to generate the nitrate number are very
23 different or slightly different, at least, than the
24 inputs used to generate numbers under CCME water quality
25 guidelines.

1 Another way of thinking about it is that
2 if you're to take some ingredients like flour and butter
3 and perhaps yeast and a few other things and mix them up,
4 you could turn out with a loaf of bread. You would mix
5 all these things together, put it in an oven, bake it and
6 come out with bread. If you took slightly different
7 ingredients, mixed them together, put them in the oven,
8 you might come out with muffins. They're different
9 things. They're not the same.

10 In the same way, the ideal performance
11 standards are not the same as CCME water quality
12 guidelines because you use different ingredients or
13 different inputs into generating the numbers.

14 That's why I disagree with the use of the
15 nitrate EQC in the Horseshoe watershed.

16 David, the next one?

17 MR. DAVID LIVINGSTONE: All right, for
18 the next one, total petroleum hydrocarbons, I think we're
19 in agreement with the BHP on this; that the existing oil
20 and gas EQC of 3 milligrams per litre be replaced with a
21 total petroleum hydrocarbon EQC of 3 milligrams and 5
22 milligrams for average and maximum concentrations
23 respectfully -- respectively, and that the EQC for TPH be
24 added to the EQC list for this licence.

25 Robert...? Nathen, sorry?

1 MR. NATHEN RICHEA: It's Nathen Richea
2 with INAC Water Resources and, yeah, as David has
3 mentioned, this recommendation is similar to what BHP has
4 proposed. We only intended to provide information to the
5 Board regarding the recent findings in the aquatic
6 effects monitoring program report for 2008.

7 In that report for the Koala watershed and
8 specifically Leslie Lake, it indicated that fish within
9 Leslie Lake were exposed to trace hydrocarbons and BHP
10 has committed to doing further investigations into cell E
11 of the Long Lake Containment Facility.

12 Those investigations were to occur in 2008
13 and I believe a report is pending. I think the date is
14 May 2009. So basically, pending the results of that
15 report, we were just trying to inform the Board that
16 there were -- that the EQC for total petroleum
17 hydrocarbons may need to be revisited.

18 MR. DAVID LIVINGSTONE: All right. For
19 the chloride, we understand the -- the Board's decision
20 on not including an EQC for chloride at this time. And
21 we're comfortable with the process that BHP has -- has
22 proposed as a way to move forward on this particular
23 issue.

24 Okay, next slide. Okay. Here's -- here's
25 a slide that will take a little walking through. All

1 these suggestions as a process forward to -- to confirm
2 the validity of the EQCs assume the amalgamation of the
3 licence -- licences now.

4 So we -- we put forward three (3) -- three
5 (3) options for the Board's consideration but I'm not
6 going to necessarily go through each one. I think the --
7 the bottom line for DIAND is that we're neither convinced
8 that the EQCs are wrong, nor are we convinced that
9 they're right. We -- we have to do some more work and
10 we're prepared to -- to certainly work closely with BHP
11 on that.

12 The -- the challenge we have is that, as -
13 - as folks have pointed out, the EQCs were initially
14 developed for DIAVIK, a different situation, different
15 context, and then applied in the current licence to
16 Sable, Pigeon, Beartooth. And the work that's necessary
17 to confirm the -- the validity of that transfer hasn't
18 been done. It hasn't been done by DIAND and it hasn't
19 been done by the proponent and it hasn't been done by
20 anybody as far as we can tell, and that needs to be done
21 to provide the -- the assurance that we think is
22 necessary to protect the environmental adequately.

23 So there -- there are several different
24 options that the -- the Board could choose and we'll
25 leave it to the Board to pick which option it -- it

1 prefers.

2 The bottom line for us though is that
3 there is time to provide that certainty or that relative
4 certainty, I suppose, the -- applying the precautionary
5 principle. We'd rather err on the side of precaution and
6 do some more work now and certainly prior to any
7 discharge into Horseshoe Lake.

8 Reclamation security. Just want to
9 introduce this slide. I was -- John Donihee raised a
10 question yesterday about the application of the
11 Environmental Agreement as an instrument to hold land-
12 related security. I was around when that Environmental
13 Agreement was negotiated. Actually, I took part in -- in
14 part of that -- that discussion related to security.

15 The Environmental Agreement was used as an
16 instrument to hold security. We didn't, at that point in
17 time, normally attach security to land use permits. And
18 we made the decision that -- that we wouldn't attach
19 security to the lease because, for one reason, the lease
20 or leases tended to be confidential documents and we
21 wanted to be open and transparent about how much total
22 security the -- the Crown was holding for the -- the
23 Ekati development back then.

24 So to the best of my understanding, there
25 is no security in the leases that are held by DIAND.

1 That land-related security is held in the Environmental
2 Agreement. We hold more security than we need at this
3 time based on our -- our -- our estimates -- our current
4 estimates and we'll be working with BHP to rectify that.

5 The Mine Reclamation Policy is pretty
6 clear that we hold the amount of security necessary to
7 protect the taxpayer should the government have to step
8 in and -- and remediate the site.

9 So in the Environmental Agreement, we --
10 we cover that for the land through the Environmental
11 Agreement and there are also other provisions in the
12 Environmental Agreement that could be -- could be
13 triggered and -- and draw on the Environmental Agreement
14 security, as well, defaulting on monitoring programs and
15 that sort of thing.

16 But the bottom line is that -- that the
17 Environmental Agreement is an instrument that we use to
18 hold land-related security at this time.

19 So I'll turn it over to John to continue
20 the discussion on reclamation security.

21 Robert tells me we got a recommendation
22 that I'm supposed to speak to first so I'll do that. And
23 it's just a -- it's an administrative one. We -- we
24 would like to see the security amounts submitted sixty
25 (60) days prior to project development. We've had some

1 challenges with some proponents in insuring that the --
2 the security arrives in an acceptable form and sixty (60)
3 days would be sufficient for us to -- to ensure that the
4 -- the security is in the -- the appropriate form and if
5 -- if some changes need to be made, they can be done
6 within that time frame.

7 MR. JOHN BRODIE: Good morning. My name
8 is John Brodie, speaking on behalf of INAC.

9 INAC retained Brodie Consulting to prepare
10 an updated estimate of the reclamation cost for the
11 Sable, Pigeon and Beartooth pits. And for these
12 developments, the objective was to calculate the total
13 reclamation liability as well as to segregate that
14 liability into amounts related to land disturbance and
15 water-related disturbance.

16 The starting point for this estimate is
17 the interim closure and reclamation plan. And that plan,
18 which is conceptual in nature, is fine for its purpose.
19 However, it lacks the engineering detail needed to
20 prepare a security cost estimate. Only the very major
21 quantities of -- of reclamation activities would be found
22 in that document.

23 Consequently, the approach that was taken
24 in this case was to refer back to the quantities of -- of
25 reclamation activities that were prepared in the 2004

1 estimate which pertained to the entire Ekati site. And
2 in addition to those activities, the current estimate
3 includes additional tasks relating to water management.

4 Those additional tasks I'll just summarize
5 very quickly. The first one is the pumping of water from
6 the Beartooth pit into the underground workings. This
7 arises from the plan to store mine water in the Beartooth
8 pit and the company has recently submitted an application
9 to do so.

10 They've not provided in that -- that
11 application any description as to the fate of that water
12 or how it -- how that water might become acceptable for
13 discharge or as a pit water in the future. So
14 consequently, it's been assumed that that water should be
15 discharged back into the underground workings where it
16 would be isolated from the surface water environment.

17 The other water-related activities that
18 had been added to the estimate pertain to the flooding of
19 the pits using waters from Lac De Gras and then the local
20 waters that would be used to flood Sable and Pigeon pits.

21 The estimate also includes a provision for
22 monitoring and for mobilization costs and there's a
23 standard inclusion of costs for engineering, project
24 management and a contingency which, in this case, is a 20
25 percent contingency.

1 This slide presents a -- a summary of the
2 -- of the estimates. The top row shows the liability for
3 all three (3) pits and then the following rows present
4 the liability of -- if only one (1) of those pits was
5 developed or if they were developed sequentially such
6 that the security would be ramped up as each pit was
7 started.

8 That concludes my part of the
9 presentation.

10 MR. DAVID LIVINGSTONE: All right. So
11 back to the recommendations. I won't read these into the
12 record, you already have them, but they -- they spell out
13 what DIAND recommends would be included or should be
14 included in the water licence for the Sable, Pigeon,
15 Beartooth development. And the total is roughly 10
16 million for water-related security.

17 On the land-related security, a little bit
18 of a -- a discussion I think is necessary here. The --
19 the amount that we're estimating would be required for
20 land-related security is in the order of 1.6 million.
21 Those -- that amount could be set within land use permit
22 authorizations but it may not be the appropriate place.

23 The -- as I said, the Environmental
24 Agreement does incorporate a land-related security. The
25 challenge I think is -- is one that we've been wrestling

1 with for a while. Where -- where is the best place to
2 put security? If it's a short-term activity, then a land
3 use permit is -- is just fine. But if it's a long-term
4 activity, then preference would be to put it in a long-
5 term instrument, normally a lease but in the case of BHP
6 Billiton's Environmental Agreement, the Environmental
7 Agreement may be the more appropriate place.

8 So I think for the Board's purposes, the -
9 - the land-related security of about 1.6 million is
10 already held basically in the Environmental Agreement
11 and, in fact, I think -- I believe we hold more in the
12 Environmental Agreement than is absolutely essential at
13 this point.

14 So we'll, as I said, discuss that with BHP
15 and -- and figure out what the -- the best way forward is
16 on that particular issue for the water licence security,
17 the water licence -- or water-related security, the water
18 licence is the appropriate place.

19 And certainly, the Environmental Agreement
20 is clear there that -- that the Environmental Agreement
21 should not be a place to hold water-related security if
22 that security is addressed in a water licence. We want
23 to avoid any kind of duplication or -- or double-dipping.

24 All right. On the amalgamated water
25 licence, I think I'll -- I'll just turn this over to

1 Robert to -- to discuss.

2 MR. ROBERT JENKINS: Madam Chair, it's
3 Robert Jenkins. Yeah, in our intervention, we provided a
4 number of suggestions for the Board's consideration to
5 enhance clarity and consistency in the amalgamated
6 licence that was drafted by BHP. So I'm not going to get
7 into any specifics and there's been a little bit of back
8 and forth on that and definitely a response from the
9 company.

10 INAC doesn't feel that any of the
11 suggestions that we put forth results in a substantial
12 change to the terms and conditions of the main licence so
13 we do feel that -- that the suggestions that -- as we put
14 forward for the Board, complies with their directive.

15 Ultimately, it's -- it's the Board's
16 decision when they get to the point of drafting the
17 format and the -- the wording of the terms and conditions
18 of the water licence.

19

20 (BRIEF PAUSE)

21

22 MR. DAVID LIVINGSTONE: All right. Just
23 a word or two (2) on Crown consultation and the -- and
24 I'm quite sure that the Board has heard this before. The
25 -- the Crown is charged with insuring that Aboriginal

1 peoples are -- are consulted when activities may take
2 place in areas of concern to them and that their concerns
3 are accommodated.

4 So the -- the process generically within
5 DIAND is to include the Board hearings as -- such as this
6 one, as -- as a component of the overall Crown
7 consultation context to work with the Aboriginal parties
8 to ensure that we understand that the -- the concerns of
9 the Aboriginal parties in large part by -- by attending
10 these sessions and intervening and reviewing all the --
11 the interventions provided by others so that we -- we
12 understand as best we can the concerns of the Aboriginal
13 groups.

14 We will then look at the -- the licence as
15 proposed by the Board, and determine for ourselves
16 whether or not we feel that the accommodation meets the -
17 - the needs of the Aboriginal parties and follow up
18 accordingly.

19 If -- if it all looks good and the
20 Aboriginal parties appear to be satisfied, then -- then
21 that -- that'll be the end of the discussion process. If
22 there seem to be gaps, then we'll follow up as need be
23 with the Aboriginal parties.

24 So in conclusion then, we've talked about
25 all of these -- these elements in one (1) form or another

1 during our presentation. The EQC situation is a bit
2 challenging. We're not sure whether the EQCs are the
3 appropriate ones.

4 We've got some time available to us to
5 help the Board out in that area. And certainly, we feel
6 that -- that whatever final determinations are made, they
7 should be made well in advance of any discharge to the --
8 to Horseshoe Lake in a broader environment.

9 We also recognize Dr. Hutchinson's concern
10 yesterday about loading Two Rock Lake with contaminants
11 in the meantime, and we need to be cognisant of that
12 concern as -- as we move forward.

13 The water-related security, we've had that
14 discussion. We presented our -- our estimates and feel
15 that the numbers that -- that we've provided are -- are
16 adequate.

17 The amalgamation of the two (2) water
18 licences, as Robert pointed out, is a good idea and
19 something we've been advocating for some time. And we
20 would like to see, shall I say, a more integrated
21 version, a stronger amalgamation than has been proposed
22 by BHP, but those are suggestions for the Board's
23 consideration. It's the Board that ultimately writes the
24 licence.

25 And I think that concludes our

1 presentation, so we'll be open for questions.

2

3 (BRIEF PAUSE)

4

5 THE CHAIRPERSON: The Chair here. Does
6 BHPB have any questions of INAC?

7 MS. LAURA TYLER: Laura Tyler with BHP
8 Billiton. Madam Chair, we do have some questions, but I
9 just wanted to see if I could have two (2) minutes just
10 to pull the questions together and make sure that we're
11 not asking the same question in different ways.

12

13 (BRIEF PAUSE)

14

15 THE CHAIRPERSON: The Chair here. I am
16 wondering if we can take a fifteen (15) minute break now
17 then. Probably more appropriate.

18

19 --- Upon recessing at 9:57 a.m.

20 --- Upon resuming at 10:14 a.m.

21

22 THE CHAIRPERSON: Can we call everyone
23 back to the tables, please? Thank you. And BHP is going
24 to be questioning INAC.

25

1 (BRIEF PAUSE)

2

3 THE CHAIRPERSON: Go ahead.

4 QUESTION PERIOD:

5 MS. LAURA TYLER: Madam Chair, at this
6 time, BHP Billiton has no questions for INAC.

7 THE CHAIRPERSON: That is a big wow.

8 Okay, IEMA...?

9 MR. DAVID LIVINGSTONE: Madam -- Madam
10 Chair, it's David Livingstone. I object.

11 THE CHAIRPERSON: I object also.

12 Okay, any questions from IEMA?

13 MS. LAURA JOHNSTON: Thank you, Madam
14 Chair, Laura Johnston, IEMA. We have a couple of
15 questions. I hate to break a roll here but...

16 In INAC's conclusions, they suggested that
17 the Wek'eezhii Land and Water Board determine a process
18 forward to develop defensible EQCs within the amalgamated
19 licence. I would like to know what INAC's contribution
20 to that process will be.

21 There was the -- the paper towards
22 development of northern water quality standards and
23 perhaps INAC could give us an indication of what steps
24 they'll be taking to contribute to this process. Thank
25 you.

1 MR. DAVID LIVINGSTONE: David
2 Livingstone. Well, I -- I think it will depend in -- in
3 large part on what the -- the Land and Water Board would
4 like us to do. But we've got expertise, Barry Zajdlik
5 for sure, and others that we can draw on. We've got
6 internal expertise.

7 We, I think collectively, need to take a -
8 - a good close look at the EQCs that are in the current
9 licence and collectively determine whether those are the
10 EQCs that'll enable us to meet as yet unstated water
11 quality objectives and we need to establish a process for
12 setting those objectives.

13 Can't do that in isolation. I don't think
14 any one party can do that in isolation. We need to work
15 collaboratively on that process and not just for this
16 licence either but -- but broadly speaking.

17 As I said earlier, water quality
18 objectives are a mix of science and values and in the
19 end, the -- the criteria that are established to meet
20 those objectives are only as good as -- as the science
21 and the monitoring and the values themselves dictate.

22 We -- we need to be continuously improving
23 our performance, bottom line. But we need to do some --
24 some work on establishing what it is we expect of one
25 another before we start putting numbers in place.

1 Numbers that are -- have a -- a longevity or potential
2 longevity anyhow and -- and monitoring is never perfect
3 either.

4 We can end up discovering that things have
5 changed past the point of being able to influence that
6 change easily. We -- we can detect change. We can
7 detect the effects of -- of those changes and we get into
8 value judgments when we talk about the harm, quote,
9 unquote, harm or benefit that those changes may result
10 in.

11 So I think we will endeavour to -- to
12 provide both the science that -- that we can in this
13 exercise, as well as the -- I guess the -- the personal
14 views and the experience that we can bring to bear when
15 it comes to -- to the discussion of values that -- that
16 northerners and ourselves as individuals and -- and
17 representatives of different agencies and different
18 viewpoints can bring to the table.

19 And collectively, I think we can -- we can
20 come up with solutions that -- that meet the needs of all
21 the parties that return the environment to its original
22 state as quickly as possible and in as small an area as
23 possible.

24 MS. LAURA JOHNSTON: Thank you for that
25 response. We have one (1) more question.

1 MR. TIM BYERS: Madam Chair, it's Tim
2 Byers here with the monitoring agency. I've got one
3 question and this will be our last question from the
4 Agency, one (1) question of Mr. Zajdlik, and that is in
5 relation to his objection to using IEPS, this performance
6 standard for the derivation of nitrate EQCs.

7 And I'd like him to help me understand
8 because I'm still not quite clear of the objection of
9 using it. Barry says -- or Mr. Zajdlik says that the IPS
10 in this instance is irrelevant to waters at Ekati because
11 the IPS is used for agricultural -- waters within
12 agricultural lands, so southern Canada lands, and not
13 pristine waters of the NWT.

14 And my reading of the IPS for nitrate
15 shows that, in fact, some northern studies using northern
16 species have in fact been factored into the data inputs.
17 So I guess I need some examples of where Mr. Zajdlik says
18 there is differences between IPS and CCME in regards to
19 differences in data inputs when they're evaluating an EQC
20 for both.

21 Thank you.

22 MR. BARRY ZAJDLIK: Barry Zajdlik, in
23 response. I think I'm going to tackle Tim's last sub
24 question first, is where you see that there's a
25 difference in the inputs to the derivations for an ideal

1 performance standard number and a CCME water quality
2 guideline number.

3 And the answer is that I couldn't find it,
4 even though I say there is. And the reason that I say
5 there is, is because I was involved with the derivation
6 of two (2) numbers under the ideal performance standard
7 paradigm.

8 And when we generated the data sets for
9 those two (2) numbers, the criteria for putting numbers
10 into the data set were different than they were for CCME.
11 And I've also worked with CCME on the methods for
12 deriving an environmental quality guideline, so I know
13 the requirements for data under both sets of paradigms
14 for generating environmental quality guidelines, and they
15 are different.

16 Before this Hearing I tried to find that
17 in writing, and I failed. So, sorry, Tim, I don't have
18 an answer to that part of your -- or demonstrable proof
19 for that part of the -- the response, but I do have other
20 concerns with the nitrate IPS.

21 And first of all, it, like any other EQC,
22 must be site specific. The number that was chosen is a
23 generic number that is in the document and it was
24 generated for use in agricultural lands. All
25 agricultural lands. It's not -- it's not specific to any

1 one (1) type of land or, sorry, agricultural land.

2 The second is that all of these
3 performance standards, you notice that they're not called
4 water quality guidelines, they're called performance
5 standards because they reflect agricultural performance
6 and performance of agricultural technologies to mitigate
7 nitrate toxicity.

8 So that's how these numbers are generated
9 in that context. So it's important to understand the
10 context in which the numbers were generated. And to
11 answer Tim's question, when you look at the species
12 composition list for the long-term nitrate number, which
13 is what BHP correctly chose in terms of between short
14 term and long term, there are cold water species in the
15 data set, but when you look at it, there also Pacific
16 tree frogs, red-legged frogs, African tree frogs, et
17 cetera, et cetera, which aren't found in Canada, let
18 alone the North.

19 And so, in terms of a species composition
20 perspective, I wonder whether the number derived under
21 the ideal performance standard is really reflective of
22 conditions here in the North.

23 Does that answer your question fully, Tim?

24 MR. TIM BYERS: Yes, I believe it does at
25 this time.

1 MS. LAURA JOHNSTON: Thank you, Madam
2 Chair. That's all our questions. Laura Johnston, IEMA.

3 THE CHAIRPERSON: Any questions from
4 Environment Canada?

5 MS. ANNE WILSON: It's Anne Wilson.
6 Thank you, Madam Chair. I just have a question that came
7 to my mind based on Tim's questioning on the IPS data. I
8 was trying to see where changes to the IPS number were
9 made to account for agricultural uses.

10 I wonder if Barry can clarify that for me
11 because it looks to me to be a receiving environment
12 number and I didn't see where an adjustment was made for
13 upstream use. So I just -- a point of clarity, please.

14 MR. BARRY ZAJDLIK: Barry Zajdlik, in
15 response to Anne's question.

16 In terms of the adjustment, it's a policy
17 type adjustment and are the -- it says very clearly in
18 the beginning of the NACE document, at least this one,
19 and I believe it's in the preface to all of them where
20 they set standards, is that they evaluate the standards
21 attainable by environmentally beneficial agricultural
22 production and management practices.

23 So Anne, I think, is asking a question
24 directly. That number, four (4) or once it's converted
25 to a nitrate number, whatever the number is, four point

1 five (4.05), how is it modified to account for
2 agricultural practices?

3 Is that correct, Anne?

4 MS. ANNE WILSON: It's Anne Wilson. Yes.

5 MR. BARRY ZAJDLIK: Okay, and that falls
6 under the policy directives under -- of the NACE
7 framework.

8 MS. ANNE WILSON: It's Anne Wilson again.
9 How would the number be different if it wasn't
10 agriculture, Barry? I don't know if you can help me with
11 this but what degree of movement was done to accommodate
12 the source in this case?

13 MR. BARRY ZAJDLIK: Barry Zajdlik. The -
14 - in terms of best available technologies, the -- the
15 mechanism for release of nitrate in an agricultural
16 receiving environment is very different than it would be
17 at the end of a pipe.

18 There, there's a widespread diffused loss
19 of nitrate through sprays and fertilizers and so the best
20 available technologies there are very different than
21 treating nitrate that comes out of the end of a pipe.

22 MS. ANNE WILSON: It's Anne Wilson.
23 Sorry, I wasn't clear on that. How did the number
24 change? The receiving environment number was my
25 question, not so much the source, but because of the

1 source how is that number different?

2 MR. BARRY ZAJDLIK: Barry Zajdlik again.
3 I don't know how the number would change based on
4 consideration of best available technologies. That would
5 have to be made on a case by case basis and it's specific
6 to the volume of effluent and the concentration of
7 nitrate that's produced and its method of discharge into
8 the receiving environment.

9 MS. ANNE WILSON: Thank you.

10 THE CHAIRPERSON: Thank you, Anne. Do we
11 have any questions from DFO?

12 MR. BRUCE HANNA: Bruce Hanna, DFO. No
13 questions, thanks.

14 THE CHAIRPERSON: The Chair here. Do we
15 have any questions from North Slave Metis Alliance?

16 MS. CHERYLE GRIEVE: Cheryle from the
17 North Slave Metis Alliance. First of all I'll apologize
18 for being late and not hearing the presentation.

19 My questions may already have been
20 answered but I have two (2) questions that I had saved up
21 for INAC.

22 The first question is: I'd like to know
23 their position on the definition of "environment" --
24 "receiving environment", sorry. Thank you.

25 MR. ROBERT JENKINS: Madam Chair, it's

1 Robert Jenkins here. BHP proposed a change to the
2 definition of "receiving environment". INAC didn't
3 oppose the change that they proposed, or didn't oppose
4 the change that they proposed, I should say.

5 Essentially BHP was requesting that
6 terrestrial environment be removed from that definition.
7 INAC's view on the definition of "receiving environment"
8 is that it's linked to the definition of "discharge"
9 because the word "discharge" does lie within the
10 definition of "receiving environment".

11 Discharge involves indirect or direct
12 release or to -- to water -- or to the receiving
13 environment actually it says. So it's INAC's opinion
14 that -- to give an example, the waste rock pile, if
15 there's seepage off the waste rock pile and that gets on
16 the -- the land and goes into the water and it's still an
17 indirect release to water, so it's more or less still --
18 still included within a discharge to the receiving
19 environment.

20 MS. CHERYLE GRIEVE: Cheryle from NSMA.

21 My second question is: Did INAC present
22 evidence to the Board or are they prepared to present
23 evidence to the Board regarding the terms of the lease
24 and how they protect the terrestrial environment?

25 MR. DAVID LIVINGSTONE: David

1 Livingstone. No.

2 MS. CHERYLE GRIEVE: Thank you. Those
3 were my two (2) questions.

4 THE CHAIRPERSON: The Chair here. Do we
5 have any questions from the public? (NATIVE TONGUE
6 SPOKEN).

7

8 (BRIEF PAUSE)

9

10 THE CHAIRPERSON: Is there any questions
11 from the Board staff?

12 MR. NEIL HUTCHINSON: Yes. Neil
13 Hutchinson on behalf of the Board staff. I'd like to
14 start off on a discussion that I -- a question that I
15 raised to BHP yesterday regarding INAC's intervention.

16 INAC had proposed imposing three (3) SNP
17 sites around the point of discharge in the lake. And
18 yesterday we heard BHP's response that they don't think
19 it's necessary to include this type of monitoring, and
20 that the diffusion studies and dispersion model they
21 proposed would provide adequate confirmation of mixing
22 characteristics.

23 I'd just like INAC again to state, why do
24 you think it's necessary that an SNP program include
25 confirmation of initial mixing in the lake?

1 MR. NATHEN RICHEA: It's Nathen Richea
2 with INAC Water Resources.

3 First off, I'll try to just provide a
4 clarification to the Board. INAC was confused by the
5 reference to the 20-metre zone in BHP's information
6 package.

7 We thought the intended 20-metre zone was,
8 in fact, a mixing zone but we've come to the conclusion
9 that it was the resolution of the model that they used,
10 so we just wanted to provide that clarification to the
11 Board.

12 In response to the plume delineation and -
13 - versus SNP stations, INAC doesn't have any disagreement
14 with conducting plume delineation studies in Horseshoe
15 Lake. I think it's a value -- valuable undertaking and
16 it would provide important information, information that
17 might actually indicate where the most appropriate
18 location for SNP stations would be.

19 INAC would like to caution, however, that
20 plume delineation studies are somewhat of a snapshot of
21 conditions during those investigations. Though there
22 will be differences in mixing, depending on the wind
23 speed, the wind direction, there will also be differences
24 depending on the discharge rate.

25 So a plume delineation study, depending on

1 season and those factors that I already mentioned, will
2 only provide a snapshot of what's actually happening at
3 that point in time.

4 SNP stations on the other hand, I think
5 what we proposed would be during periods of discharge,
6 and our understanding was that the discharge would be
7 seasonal, that stations be set up for an SNP monitoring
8 to determine the mixing throughout the course of that --
9 that discharge period. So there are two (2) different
10 purposes.

11 Plume delineation will help specify where
12 SNP stations may be most appropriate. I hope that
13 answers your question.

14 MR. NEIL HUTCHINSON: Thank you. Neil,
15 from the Board. It does.

16 So you provided some very specific
17 recommendations as to depth and location of these SNP
18 sites, but can I interpret that you would like to see SNP
19 sites considered in the licence and not necessary as
20 prescriptive as you've recommended?

21 MR. NATHEN RICHEA: Nathen Richea, INAC.

22 Yeah, exactly, and it has to do a bit with
23 the interpretation of the 20-metre zone that was included
24 in BHP's information package and our clarification that
25 we've received on that. So, thanks.

1 MR. NEIL HUTCHINSON: Thank you. Neil
2 for the -- Neil Hutchinson for the Board again.

3 In your prepared intervention this
4 morning, talking about nitrate, you seem to suggest that
5 the reason that you wanted an EQC was to deal with
6 problems of nutrient enrichment only.

7 Is that, in fact, your only concern or
8 from your discussions of IPS and CCME, are you also
9 concerned with the potential for toxicity of nitrate in
10 Horseshoe Lake?

11 MR. BARRY ZAJDLIK: Barry Zajdlik. In
12 terms of nitrate, I have not examined the projections
13 from BHP as to what concentrations will be coming out and
14 I haven't examined the nitrate literature with respect to
15 toxicity.

16 So, no, the primary concern at this point
17 is not toxicity. It is due to the cumulative affects of
18 discharging various forms of nitrogen into the
19 environment and the potential implications with respect
20 to eutrophication or nutrient enrichment.

21 MR. NEIL HUTCHINSON: Thank you. Neil
22 Hutchinson from the Board.

23 Yesterday, we heard Environment Canada's
24 opinion that they knew of cases where nitrogen additions
25 on their own had stimulated productivity in the lake.

1 Are -- are you aware, INAC, or is -- that
2 anyone has submitted such evidence in front of the Board
3 that might help the Board decide what an appropriate EQC
4 might be for nitrate should -- should nutrient enrichment
5 be a problem?

6

7 (BRIEF PAUSE)

8

9 MR. BARRY ZAJDLIK: Barry Zajdlik.

10 I think that's something that INAC could
11 take on as an endeavour to try to help the Board look at
12 what nitrate concentrations -- or increases in nitrate
13 have resulted in demonstrable acts in the receiving
14 environment with respect to phytoplankton biomass.

15 MR. NEIL HUTCHINSON: Thank you. Kathy,
16 in her usual details-oriented manner, has -- has written
17 down, When would you be prepared to do that?

18 MR. BARRY ZAJDLIK: Barry Zajdlik. I
19 think we could implement that or begin that process quite
20 soon and have a response back within three (3) to four
21 (4) weeks.

22 MR. NEIL HUTCHINSON: So -- so three (3)
23 weeks? BHP committed yesterday to three (3) weeks so
24 we'll ask that you could do that too.

25 Neil, again from the Board.

1 MR. JOHN DONIHEE: Madam Chair, we'll
2 mark or identify that as Undertaking Number 2 (sic) for
3 the proceeding.

4 THE CHAIRPERSON: The Chair so recognize.

5
6 --- UNDERTAKING NO. 3: Barry Zajdlik from INAC to
7 provide information as to
8 what increases in nitrate
9 have resulted in demonstrable
10 acts in the receiving
11 environment with respect to
12 phytoplankton biomass.

13
14 MR. NEIL HUTCHINSON: Thank you. Neil
15 Hutchinson, for the Board. You laid out a very
16 comprehensive and I think a well thought out process for
17 deriving EQCs. It's easy to see how this would be
18 intended for a new water licence.

19 Is your intention that a process like this
20 should be applied to water licence renewals, as well?
21 And should the process be applied universally or only if
22 there's evidence that the process followed by BHP could
23 result in harm to the lake?

24 THE CHAIRPERSON: Excuse me, Mr.
25 Hutchinson. If you do not mind, to slow down for the

1 translators. Thank you.

2 MR. DAVID LIVINGSTONE: This is David
3 Livingstone, Madam Chair. If he could slow down for the
4 respondents too, I'd appreciate it.

5 Could you restate the question slowly and
6 in both parts? Thank you.

7 MR. NEIL HUTCHINSON: Thank you. I
8 thought I was going slowly.

9 INAC have laid out a detailed and a
10 comprehensive and what I think is a good process for
11 deriving EQCs for water licences. It's certainly a good
12 process to follow for a new licence derivation.

13 Are you proposing that this process should
14 be applied for renewals, as well? And should the process
15 be applied universally for every renewal or only if
16 there's evidence that the process followed by the
17 applicant could result in harm to the lake?

18 MR. DAVID LIVINGSTONE: David
19 Livingstone.

20 Yes, generically renewals -- this renewal,
21 in whatever period of time. I think, as I said earlier,
22 we -- we need to step back a little bit, for the Sable
23 Pigeon Beartooth anyhow, and -- and develop some water
24 quality objectives that -- that we haven't yet objected -
25 - developed for this -- this project. And I think the --

1 the best way to do that is a collaborative approach.

2 So for this renewal, yes. For -- for
3 renewal of this licence in the future, yes. For other
4 renewals, probably, in the -- in the context of
5 continuous improvement, and due diligence, and adaptive
6 management, and all of that.

7 There -- there's an onus that's earlier on
8 all parties to ensure that we are doing the -- the best
9 we can in the circumstances and -- and checking, auditing
10 our performance regularly.

11 So I think the -- the onus of -- on the
12 proponent are on an intervener to prove that -- that an
13 EQC is not the appropriate number is fair enough. But in
14 the end, I think it -- it's going to be the -- the
15 collaborative approach that's necessary is going to be
16 the one (1) that dictates whether, in fact, a licence --
17 a change in the EQC needs to be made.

18 So I -- I mean, I'm struggling with --
19 with the -- the generic nature of the question. You
20 know, universally, it kind of depends. But I think the
21 principle underlying it all is, let's be really careful
22 here. Let's make sure that we're not being complacent,
23 that we're not taking for granted the decision we made
24 yesterday, or last year, or seven (7) years ago remains
25 valid.

1 Let's check. Let's make sure that -- that
2 we're doing the right monitoring and -- and producing
3 reliable results and we're not missing something in the
4 monitoring program.

5 Let's make sure that -- that we double
6 check on the science end. Let's make sure that on a
7 regular basis we check with the -- the people in whose
8 backyard these activities are taking place and make sure
9 that their values are -- are being respected in the --
10 the terms of the licence that -- that is ultimately
11 developed by a Board and then -- and then approved by a
12 Minister where appropriate.

13 So in a nutshell, yeah, I think we should
14 be doing this on a regular basis. I think EQCs should be
15 living numbers, not just numbers that are developed for a
16 licence and then parked for the duration of a licence. I
17 think we need to -- to be careful.

18 As I've said many times, the North is not
19 a place that -- that is in -- is very forgiving, and --
20 and if we make mistakes here, and we've made plenty of
21 them in the past, the consequences of those mistakes will
22 last.

23 And I think that -- that there's an onus
24 on all of us to avoid, to the best extent we can, making
25 mistakes in the first place. Catching them later is --

1 is a good thing, but it's not as good as preventing them
2 in the first place.

3 And I just -- upon that -- that topic, I -
4 - I listened with interest yesterday to BHP's
5 presentation, or at least the discussion in the afternoon
6 that I was able to attend, and the phrase "zero harm"
7 came up a number of times.

8 And I thought, well, that's -- that's kind
9 of a curious phrase in the context of mining. It's
10 difficult to achieve zero harm. So I -- I took the
11 liberty of looking at the BHP Billiton website last night
12 and discovered that there's a definition that goes along
13 with that zero harm slogan.

14 And the definition, basically, is the
15 definition that -- that we all use, trying to minimize
16 environmental harm at all times and to avoid harm where
17 we can in the first place.

18 EQCs are a very important part of
19 minimizing or avoiding harm, and monitoring programs that
20 go with it, so there's an onus on all of us to -- to make
21 sure that -- that EQCs are living numbers, and not -- not
22 numbers that we simply refer to as -- as the numbers that
23 we have to meet and then say, well, if we're meeting them
24 we must be good. It ain't necessarily so.

25 MR. NEIL HUTCHINSON: Thank you. Just

1 one (1) quick followup.

2 We also respect that technology changes
3 over time and so when one reconsiders an EQC, should we
4 also consider the availability of best available
5 technology and how that may have changed since the last
6 licence was issued?

7 MR. DAVID LIVINGSTONE: David
8 Livingstone. I think so. I think we should look at --
9 at all tools available to us and factor them all into the
10 ultimate decision that that's going to be a blend.

11 But protection of the environment is -- is
12 an overriding concern I think for all of us here. Barry
13 would like to follow up on your earlier question, if the
14 Chair permits.

15 MR. BARRY ZAJDLIK: Barry Zajdlik. I --
16 one of the things that I heard in your question, Neil, I
17 think that I heard, was not a direct question but an
18 implied one, and that was concern regarding an unwieldy
19 process, whether this places a huge onus on the -- the
20 Boards, the proponents and Intervenors generating new
21 EQCs continually.

22 And it also probably addresses the
23 question you just asked about best available technology.
24 In the EQC derivation process one of the fundamental
25 things is to understand what the intended water use is.

1 And it's not likely that it will change quickly during
2 the course of a water licence or change substantively.

3 So because the intended water use doesn't
4 change, one of the big inputs into the EQC processes is
5 probably going to remain fairly static over a five (5) or
6 ten (10) year period.

7 The science that is used to provide
8 guidance on an environmental quality guideline also only
9 changes slowly, sometimes a little too slowly.

10 And now I have to speak slowly.

11 So again, I don't see that there'll be
12 huge changes in EQCs over the short term period. That's
13 not to say that they shouldn't be flexible, they most
14 certainly should be. And if there's a radical change in
15 intended water use or land use or a change in
16 improvements in science, then we should adopt those and
17 change the EQCs.

18 But I don't think they'll change quickly
19 and yo-yo around within the life of a twenty (20) --
20 twenty (20) year mine.

21 MR. NEIL HUTCHINSON: Neil Hutchinson.
22 Thank you. I will turn it over to Kathy.

23 DR. KATHLEEN RACHER: Kathy Racher here,
24 for the Board. I think a number of questions have --
25 have been answered in one (1) way or another but I think

1 I will take the opportunity to clarify a couple of
2 points.

3 In INAC's intervention you talk about --
4 you -- you've mentioned that you don't feel that BHP did
5 the work to examine all the current EQC to see if they
6 were appropriate and protective of the receiving
7 environment.

8 And I was just wondering if it's INAC's
9 position that normally it's the proponents responsibility
10 to review those EQC upon renewal, because I think what I
11 was hearing from BHP yesterday was that they -- they
12 thought that if other parties had a problem with the EQC
13 -- whoever has a problem with the EQC is the one that
14 needs to bring it up.

15 So that's my question to you.

16 MR. DAVID LIVINGSTONE: David
17 Livingstone.

18 Well, as I've said, the onus is on all
19 parties but I think the primary onus is on the proponent
20 to demonstrate clearly to -- to other Intervenors and to
21 the Board that its approach is sound and reproducible,
22 that we can be confident that the -- the proponent has
23 done the work necessary to back up its assertions, that,
24 in fact, the -- the activity will result in as little
25 harm as possible.

1 So in a nutshell, yeah, I think the -- the
2 proponent bears the -- the primary responsibility for
3 demonstrating that its approach is sound and
4 demonstrating in a way that -- that everyone can -- or
5 the experts, at least, can track and verify.

6 But having said that, the proponent isn't
7 alone in the business and the setting of water quality
8 objectives, for example, is certainly not something that
9 we should just simply turn to the proponent for and say,
10 okay, well, what do you think, and -- and then criticize
11 that.

12 I think we share collectively a burden
13 there and -- and we need to be working collectively to
14 develop a process for determining water quality
15 objectives on a site specific basis, and then backing up
16 and -- and using the science to determine what the EQCs
17 should be to achieve those objectives in the time and
18 space specified.

19 My experience in -- in environmental
20 assessment and environmental reviews has -- has been
21 mixed in that sense. I think sometimes we work better
22 than others, collectively.

23 And I'm encouraged, frankly, and I -- I
24 want to put this on the record, with BHP's performance
25 over the last few years in -- in being collaborative and

1 being open and -- and really doing an enormous amount of
2 work to -- to further its reputation as a responsible
3 developer.

4 But having said that, I think there is
5 some weaknesses in -- in the EQC analysis and that we
6 need to confirm that those are the right numbers because
7 right now, from the DIAND perspective, we can neither say
8 for sure that they're wrong, nor can we say for sure, or
9 even probably, that they're right.

10 We need to be careful and we need to do
11 some work in that area.

12 DR. KATHLEEN RACHER: Okay. Kathy here.
13 Thank you. So that just leads to my next question. Just
14 -- you have said that perhaps INAC could have done a bit
15 more work, and that -- that was my question in terms of
16 if -- if it's very important to set appropriate EQC.

17 You know, it seems that there isn't a
18 policy or a process in place at INAC to be reviewing EQC
19 on a regular basis because there has been -- the licence
20 was granted seven (7) years ago and -- and no review has
21 been forthcoming from INAC, and -- and then you state in
22 your intervention that there was no time.

23 So I -- I just wondered if -- if you have
24 plans to -- to do better, and how, in the future, or if
25 you think you should.

1 MR. DAVID LIVINGSTONE: David
2 Livingstone. Well, under the -- the previous management
3 of water resources I'm sure we would have done better.
4 However, that -- that particular individual chose to go
5 to -- to take on a different role.

6 Yes, we will do better. Normally, we've -
7 - I think we've provided actual recommended numbers when
8 we intervene. We've provided recommendations on EQCs at
9 -- for all parameters, and this time we didn't.

10 And I -- I think that -- that we need to
11 do better. I think we need to be more diligent and I
12 think we need to set in place a process that enables us
13 to provide good advice to the Boards when the Boards need
14 it, and not -- not disappoint, I suppose is -- is a word
15 we could use.

16 I think government has a -- this
17 department as a -- as an environmental steward needs to
18 not just be in the position of critic, but needs to be an
19 advocate and getting out in front on -- on a number of
20 issues, and establishing a process to derive site
21 specific EQCs that we can all be confident in is a
22 process that we'd like to be involved in.

23 DR. KATHLEEN RACHER: Okay. Kathy
24 Racher. Well, you've led me directly to the next
25 question. In your presentation you laid out a procedure

1 for setting water quality objectives, and you've talked
2 some about that.

3 One (1) of your recommendations in your
4 presentation had to do with the chloride, proposed
5 chloride effluent quality criteria, that the current
6 Sable Pigeon Beartooth licence has called for the
7 proponent to do work to develop a site specific chloride
8 objective which the company has asked to remove that
9 clause from this licence since it does not -- we -- we
10 kind of -- well, the proponent said we -- we don't need a
11 chloride EQC and I think most people are kind of agreeing
12 that -- that maybe we don't at the Sable pit.

13 And the company has found -- has come up
14 with a way to -- to deal with the chloride issue within
15 the main licence within the adaptive management plan, for
16 example.

17 And I think they stated yesterday that
18 they still wanted to work on the chloride water quality
19 objective. To date, they've -- they've done a great deal
20 of work on that and submitted a lot of really interesting
21 and -- and valuable information on that.

22 But when you -- when you talked about
23 water quality objectives we talked about values the and
24 how -- you know, what's the value to the user of that
25 water, and that that was an important part of setting an

1 objective, and -- and that we all have, you know,
2 responsibilities in setting water quality objectives.

3 So I just wanted a specific comment on how
4 -- how we're going to set water quality objectives in
5 future, either this chloride one or -- or others if you
6 have an idea of how we could accomplish that.

7 MR. DAVID LIVINGSTONE: David
8 Livingstone. Well, I think the Don MacDonald paper is a
9 -- is a starting point in a sense.

10 I think that -- that we need to
11 collectively come to an agreement on the elements that go
12 into setting water quality objectives. Then we have to
13 sit down collectively, collaboratively, and sort out the
14 criteria, I suppose, that we would use as a checklist if
15 nothing else, as a part of the -- the tool kit for
16 determining water quality objectives on a site specific
17 basis.

18 And we can't do that, and no one (1)
19 agency or one (1) organization can do that in isolation.
20 I think we need a collaborative approach, so the
21 background paper, the background documentation looking at
22 -- at results or -- or processes elsewhere for setting
23 water quality objectives and then establishing a process
24 in the NWT perhaps initially for -- for this program --
25 for this project, because, as we've said we -- we would

1 like to review all the EQCs with -- with water quality
2 objectives and -- and good science and all that stuff in
3 mind before there's discharge to the broader environment
4 and sooner rather than later in terms of loading of Two
5 Rock Pond.

6 So I think what we need to do is -- is and
7 what DIAND would certainly be happy to do would be to
8 participate, lead, arguably, if necessary, the -- the
9 development of a process that would bring the key parties
10 together and sort out the criteria for developing water
11 quality objectives and then back up the necessary steps
12 to the effluent criteria and design -- redesign, if
13 necessary, the -- the appropriate monitoring programs
14 that -- that would provide the feedback.

15 We can do that at the Board's direction.
16 We can do that as a lead or as a -- as a partner to it.
17 We're quite interested in this and certainly we've been
18 charged in the past with developing a better water
19 management system from the regulatory perspective and we
20 -- we have work to do there.

21 So collaborative approach using best
22 practices from elsewhere and involving the -- the
23 affected parties in the NWT, perhaps starting with a
24 pilot project like this particular project, I think would
25 be -- would be one way to approach it and, again, at the

1 -- the direction of the Board if -- if the Board sees
2 fit.

3 Barry would like to add a little comment.

4 MR. BARRY ZAJDLIK: Barry Zajdlik. The -
5 - what you're asking, Dr. Racher, is fairly difficult but
6 there is -- there has some work been done internationally
7 on this issue. It's not exactly the same as the outline
8 that I laid out this morning where there's direct public
9 consultation on the intended water usage but what
10 jurisdictions have done internationally is set different
11 levels of guidelines for different general sorts of
12 receiving environments.

13 So, for example, in a -- an urban setting,
14 they'll have one level of a guideline and then in a
15 parkland, they'll have another level of a guideline. And
16 then in a pristine area, they'll have another level of a
17 guideline.

18 And the idea there is that you're
19 preserving the general quality of the environment that
20 already exists so it doesn't explicitly address the
21 user's needs but if the user says that we want to retain
22 what is there, then these numbers could be adopted and
23 reflect -- the guidelines themselves could be used as
24 objectives because they already embrace the idea of
25 intended use. So that is a way forward.

1 DR. KATHLEEN RACHER: Okay, Kathy Racher
2 here. Thank you. I -- sorry, I don't have more
3 questions to make it more fun for you, David, but I think
4 I'm done. Thank you.

5 THE CHAIRPERSON: John Donihee...?

6 MR. JOHN DONIHEE: Thank you, Madam
7 Chair. My name is John Donihee. I'm Board counsel. I
8 hesitate to go back over what my colleagues have been
9 asking you about but I think I have to.

10 And there's something about the discussion
11 that's gone on that -- that I find may be causing some
12 difficulties for the Board because if I'm having trouble
13 with it, even though I'm only a lawyer and not as smart
14 as the Board members, I'm suspecting that there's a lot
15 of this discussion that's not getting us closer to the
16 answer which really has to come out in the form of a
17 water licence.

18 So here's my problem. David -- Mr.
19 Livingstone, you've used the word "onus" rather loosely
20 on a number of occasions in your answers, saying, for
21 example, you know, the onus is on all of us to work
22 together and I don't doubt that anybody in the room joins
23 with you in -- with those sentiments.

24 But the issue here really is, this is a
25 legal proceeding and onus means a different thing to

1 lawyers than it does to everybody else. And when we use
2 that kind of term in that way, it doesn't necessarily
3 help.

4 So let me just speculate for the moment,
5 and I do want to emphasize I'm speculating, but I suggest
6 that BHP didn't ask INAC any questions because -- I'm
7 excited too. And I should really know better.

8 I suspect that BHP didn't ask INAC any
9 questions because when it comes to the EQCs for which
10 they've not asked for any change, they don't feel that
11 there's enough evidence here to convince the Board to
12 make a change at this point.

13 And I think we all understand this is a
14 licence renewal process and that BHP wants and deserves
15 certainty in order to make their business decisions going
16 forward. So the Board will write a licence and the
17 licence will have EQCs in it.

18 And what -- I guess what troubles me is
19 that then this fuzzy debate about let's all get together
20 and sort this out and the suggestion that there be some
21 kind of, I'm assuming, some kind of post-licencing
22 process, may very well help going forward but it...

23 So my first question is, you know, that
24 presumes as I -- from where I'm sitting, that BHP gets a
25 licence with the exception of the four (4) EQCs that

1 they've talked about changing; that BHP gets a licence
2 with the current EQCs in it.

3 Now is that what DIAND understands is
4 likely to happen here?

5

6 (BRIEF PAUSE)

7

8 MR. DAVID LIVINGSTONE: David
9 Livingstone. I can always rely on John to make things
10 more fun.

11 Yeah, essentially, that's the position
12 that the Board is in, I think, that -- that there isn't
13 enough information available for the Board to change the
14 EQCs that -- that BHP is recommending stay as they are.

15 And I'm not sure that the -- the
16 information is there for the Board to easily make a
17 decision on the -- the remaining four (4) EQCs. And we,
18 I think, have not been as helpful as -- as I would like
19 us to be in helping the Board get through this.

20 So, what we've said is that we need to --
21 we, DIAND, among others, needs to take another look at
22 the -- the EQC package, all the parameters, and determine
23 as best we can whether those are suitable, and certainly
24 do that prior to discharge into the environment, the
25 broader environment.

1 We would like to do that in a
2 collaborative fashion because just setting EQCs without
3 the underlying objectives, water quality objectives,
4 isn't necessarily going to take us to where we need to
5 be.

6 And setting water quality objectives, as
7 we've said, is a science and values based exercise. So -
8 - and we've -- we've been critical of -- of the
9 application of EQCs developed for a different site being
10 applied in this particular site, and continue to -- to
11 apply in this particular site without the more rigorous
12 review, and we bear responsibility in -- in doing that.

13 So, it puts the Board in the position of -
14 - yeah, I think that the Board's in a tough place, and
15 that's why we've kind of referred to the EQCs as
16 "interim".

17 And as I said earlier, any EQC can be
18 considered interim because any EQC can be changed if
19 there's sufficient evidence or reason to warrant a
20 change, if the science changes, if the monitoring program
21 detects unexpected changes, if values change, if, for one
22 (1) reason or another something unexpected crops up on
23 the -- the proponent side and -- and the proponent says,
24 look, you know, we got -- we've got some real
25 difficulties here. We didn't expect those difficulties.

1 We're going to need some -- some amendment. So any
2 number of things can change, and so the EQCs are -- are
3 living in that sense.

4 We recognize BHP Billiton's concern about
5 certainty. So the bottom line, yeah, we -- we expect, I
6 think, that the Board will issue a licence based on the
7 evidence before it.

8 And the evidence, frankly, to change the
9 four (4) EQCs is not overwhelming, in our views, and the
10 evidence to -- to retain the -- the other EQCs, as
11 stated, is not as precautionary as we would like, and we
12 would like to do something about that, to provide more
13 assurance at a later date to the Board that -- that we
14 are either on track or we're not.

15 And we'd like to be involved in that
16 process and we will take up our responsibilities
17 appropriately.

18 MR. JOHN DONIHEE: Thank you, Mr.
19 Livingstone. I guess the other question that I have that
20 relates to that, yesterday we heard BHP say on a number
21 of occasions that the SNP, the AEMP, and the WAMP, Water
22 -- I don't even know what that stands for -- but anyways,
23 we're all going to be protected by it, or least the
24 environment will be protected by it.

25 The question I really have is, whether,

1 you know, INAC shares the view that all of these
2 monitoring activities that are ongoing are adequate to --
3 to give an early warning if, you know, these EQCs, that
4 may or may not be exactly right, aren't quite working.

5 Do you agree with BHP that these
6 monitoring programs are sufficient to give the kind of
7 early warning that might be required if some -- some
8 sudden change needs to be made or radical change needs to
9 be made to an EQC?

10 MR. DAVID LIVINGSTONE: David
11 Livingstone. I'm just going to make a comment and then
12 turn to my colleagues here for some advice.

13 But the first comment I'd make -- I'm
14 going to make two (2). First is that I thought lawyers
15 were experts in acronyms and -- but I guess maybe
16 bureaucrats are even better at it, government as well as
17 industry.

18 And the -- and the second point is,
19 generally speaking, I think we've got a pretty good
20 monitoring program but there's always room for
21 improvement and that's where I'm going to ask folks to
22 caucus for a second or two (2) and -- and see if I can
23 get some more detail on that.

24

25 (BRIEF PAUSE)

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THE CHAIRPERSON: Go ahead, David.

MR. DAVID LIVINGSTONE: David Livingstone, DIAND. Okay, I think I've got an answer that might be helpful.

Back up a step or two (2). First is a -- first point I guess to make is that there is no aquatic effects monitoring program at this point for Horseshoe Lake. I mean it's -- there isn't one developed yet.

Generally speaking, the aquatic effects monitoring program process and criteria and so on that's used elsewhere by BHP Billiton could be, I think, readily adapted and effective for Horseshoe Lake once discharge begins.

The other thing I -- I guess I'd point out is that there are several different types of monitoring. There's the end of pipe regulatory monitoring, the regular samples that a proponent takes and an inspector takes and so on and that -- that works pretty well.

The -- the kind of monitoring program I think you're talking about is -- is the aquatic effects monitoring program, in small letters.

And I think that, based on what little discussion we've had, one (1) could certainly be developed for Horseshoe Lake that should be sensitive

1 enough to determine whether the expected results are
2 being attained. That depends on, obviously, things like
3 location of SNP sites and all of that stuff but in
4 theory, yeah.

5 And again, getting back to the EQC
6 discussion, we need to -- to make sure that the -- it's
7 not the cart driving the horse here and that the EQCs are
8 -- are carefully developed in the first place, and a
9 monitoring program carefully developed to track potential
10 changes to the environment, and that we're not just
11 throwing out one element and then developing a really
12 detailed monitoring program and perhaps tracking the
13 wrong changes or attempting to detect changes that aren't
14 relevant.

15 I don't know if that helps, John, but,
16 generally speaking, we think we know that -- that a good
17 sensitive aquatic effects monitoring program could be
18 developed that should be able to detect changes early
19 enough that -- that harmful effects can be avoided.

20 But those -- those are living documents
21 too. It's an adaptive management program and, again, it
22 doesn't do anybody any good to be complacent.

23 THE CHAIRPERSON: John Donihee...?

24 MR. JOHN DONIHEE: Thank you, Madam
25 Chair. John Donihee again. Well, I'm just curious and -

1 - Mr. Livingstone because, you know, INAC's evidence
2 suggests some doubts about the EQCs and the circumstances
3 I guess we find ourselves in now.

4 But you've made really no recommendations
5 for any kind of additional monitoring to find out. I
6 mean, is the only way forward the kind of process that
7 you've talked about, you know, to re-examine the EQCs
8 themselves?

9 Is that the best way forward or is there a
10 way forward that would just see us improve the monitoring
11 to make sure that harm is not occurring to the aquatic
12 environment while we're working with these interim EQCs?

13 MR. DAVID LIVINGSTONE: David
14 Livingstone. Well, I think it's -- it's that and more.

15 I mean, I think we need to get back to the
16 water quality objectives discussion to -- to make sure
17 that we've got site specific water quality objectives
18 that work; back up and develop effluent criteria that
19 will enable us to meet those objectives; develop a
20 monitoring program that ensures that -- or that tracks
21 whether, in fact, those objectives are being met.

22 So it's -- it's all of those things and --
23 and again, there's a -- there's an iterative loop there
24 that we need to be -- to be sure that -- that, in fact,
25 we are tracking, and not just blindly tracking but

1 intelligently tracking change and adapting the monitoring
2 program early on to -- to focus on elements that we may
3 not have predicted or -- or to change the monitoring
4 program to be less sensitive when, in fact, there's --
5 there's no detectable change, you know.

6 I mean it -- these things are living
7 documents and -- and you can't just put all your
8 attention on a monitoring program without backing up and
9 -- and determining what it is, in fact, you're trying to
10 monitor, what objectives are you trying to achieve and
11 how are you trying to achieve them?

12 MR. JOHN DONIHEE: Thank you, Madam
13 Chair. John Donihee.

14 Thank you, Mr. Livingstone. That's all
15 the questions I have on that topic. I have two (2) or
16 three (3) other quick ones.

17 You make reference to the security that's
18 being held in the Environmental Agreement for land
19 related purposes and I just wonder if you could advise
20 the Board whether, in your view, is there a mechanism in
21 the Environmental Agreement for security reductions to
22 take place if you had to give some back?

23 MR. DAVID LIVINGSTONE: David
24 Livingstone. That -- the Board will indulge me for a
25 second. It reminds me of a situation and I think I've

1 used this in other places.

2 Years ago, Alberta and Newfoundland were -
3 - were trying to arrange a loan to Newfoundland. And
4 that was in the days of the oil boom, first oil boom, and
5 Alberta was replete with cash and -- and was looking ways
6 to spend it and Newfoundland, of course, in those days
7 wasn't doing so well.

8 And the parties got together and the folks
9 from Alberta said, Well, you know, this is kind of
10 unusual for us. We don't know much about this kind of,
11 you know, loaning money. And the folks from Newfoundland
12 said, Don't worry, we know lots about it. We'll lead you
13 through the process.

14 I think that we've got a similar situation
15 with -- with government. We're really good at accepting
16 the security deposits. It's less clear about how we --
17 we return money. But I'm sure BHP will be able to guide
18 us through that process.

19 In terms -- in terms of the Environmental
20 Agreement itself, the process isn't real clear but we'll
21 figure it out. It's not a -- it's not a straightforward
22 exercise as far as I can tell.

23 MR. JOHN DONIHÉE: And just so Mr. Brodie
24 doesn't feel I'm ignoring him entirely, I have one (1)
25 question for him.

1 The current licence has a 65/35 split for
2 land and water and I note that you have done your own
3 calculations for the split in the evidence here, your
4 slides that you just produced.

5 And I just want to confirm that the --
6 that the land water split is really based on the
7 activities that you looked at and your professional
8 judgment about how they fit relative to what might
9 generate a cleanup cost for land as opposed to water.

10 Is that primarily an engineering analysis
11 assisted by your professional judgment?

12 MR. JOHN BRODIE: This is John Brodie
13 speaking on behalf of INAC.

14 The segregation of liability and the land
15 and water related is a -- a technical or engineering
16 judgment based segregation. And the -- the simple
17 description of it is that those activities that clearly
18 relate to water are assigned as water related activities.

19 So, for example, in the current estimate
20 all of the activities that related to pumping of water
21 from one (1) location to another as part of a reclamation
22 concept would be assigned to water-related activities.

23 Conversely, activities such as
24 construction of safety berms around pits, re-sloping
25 areas that -- you know, to facilitate terrestrial use, et

1 cetera, would be considered as purely land-related
2 activities.

3 And then on a judgment basis there's some,
4 in this particular case, relatively small number of
5 activities that have both a land and water-related
6 component. For example, contouring of the overburdened
7 slopes at the crest of a pit that would ultimately be
8 flooded, that contouring might be done to ensure that the
9 slopes are, in fact, stable when they're flooded, but it
10 may also have a benefit in terms of controlling sediment
11 released from those soil slopes.

12 So that will be a land and water-related
13 activity and it would be some -- some of that activity
14 would be assigned to both land and water-related
15 liability.

16 Does that answer your question?

17 MR. JOHN DONIHEE: John Donihee. Yes,
18 thank you, sir. Final question, Madam Chair.

19 Mr. Livingstone, you made a comment
20 towards the end of your presentation where you were
21 talking about the -- where the security might be held.

22 And you suggested that there are
23 advantages to holding it in a what you call long term
24 instrument. And I just wonder what do you mean by or how
25 you characterize those advantages.

1 You know, if we're talking about a letter
2 of credit, at least the ones that I've seen tend to be,
3 you know, provided on an annual basis with -- they have a
4 rollover clause in them and they just keep going until
5 one side or the other of the parties either uses the
6 credit or returns it because the reclamation has been
7 done.

8 So I'm wondering, you know, in my -- the
9 reason I give you that example is just that I don't see
10 any particular cost advantage there because it's actually
11 the instrument that you use to deliver the credit itself
12 is where the cost comes from, and whether it's held
13 through a licence or whether it would be held through a
14 land use permit or an environmental agreement, you know,
15 that doesn't have any effect on that cost. That's only
16 one (1) aspect of what the advantage might be.

17 I'm just wondering what other advantages
18 you see or might see in terms of using a longer term
19 instrument.

20 MR. DAVID LIVINGSTONE: David
21 Livingstone. Yeah, I was coming at it from perspective
22 of a land administration point of view.

23 I think that in principle and I -- I guess
24 -- I suppose it dates back to pre MVRMA days but land use
25 permits are -- are short, relatively short term

1 activities that are -- the permit essentially in theory,
2 at least, applies to the duration or applied to the
3 duration of the activity pre MVRMA.

4 And once a proponent had a lease, then
5 there was no need for land use permits in those days. So
6 the distinction between long term activity on a piece of
7 land and the short term burst of activity was pretty
8 clear.

9 You know, often we would be in the
10 position of issuing land use permits and then a company
11 would decide to go into production and would get a lease
12 and you'd no longer issue a land use permit on that
13 lease.

14 The situation has changed with the MVRMA
15 but I think the -- the underlying principle is still
16 something worth thinking about.

17 The -- the heart of the activity is -- is
18 essentially related -- or the land tenure for the long
19 term activity is -- is vested in the lease. The land use
20 permit is intended to cover the activities on that -- on
21 the land for a specified period of time.

22 And it -- I'm just thinking that in terms
23 of a twenty (20) year activity, rolling over security and
24 land use permits is a little more burdensome from a land
25 administration standpoint than -- than setting aside the

1 core amount of security in a lease or, for example, an
2 environmental agreement, and then topping it up as need
3 be through a land use permit security.

4 If -- if there's a kind of activity that -
5 - that creates an additional burden that isn't covered by
6 the core security in that new land use permit then, by
7 all means, add the -- the incremental amount to the land
8 use permit and we're still covered in total water
9 licence, land use permit and lease security.

10 But if there's no anticipation that the
11 level of activity is going to exceed that contemplated in
12 the lease security, then -- then there's no need to add
13 more to the land use permit.

14 This particular activity is more
15 complicated because we've got an environmental agreement
16 that essentially replaces -- the security in the
17 environmental agreement replaces the security that would
18 normally be held in the lease. And we've got more than
19 enough in the environmental agreement.

20 So I just -- I -- I think that, in
21 principle, I'd rather see the -- the additional security,
22 if any, be --the security for land related remediation be
23 in the environmental agreement rather than reducing the
24 environmental agreement to -- to a bare minimum and --
25 and putting that land-related security in -- in land use

1 permits.

2 So, I mean, from an administrative
3 standpoint, land administration standpoint, it's just a
4 little easier for folks to wrap their heads around from a
5 financial practicality standpoint.

6 Yeah, I think you're right. I don't think
7 it really matters a whole lot other than when the current
8 land use permit expires and you've got to make sure that
9 the next land use permit has security attached to it.
10 And, you know, it's as much an artifact of the
11 legislation as anything.

12 MR. JOHN DONIHEE: Madam Chair, it's John
13 Donihee. Unfortunately, David stimulated one (1)
14 additional little question and it's just the Board has
15 the authority to order security under either a permit or
16 a licence.

17 How does the Board -- the Board's not a
18 party to the environmental agreement so how do we get
19 from here to there, in your view?

20 MR. DAVID LIVINGSTONE: Well, I think the
21 -- the Board can -- can determine whether it's going to
22 put -- I mean, the environmental agreement is -- is clear
23 and the amount of security held in the environmental
24 agreement is -- is public. We can -- if the Board
25 doesn't have that information we can certainly make sure

1 it does.

2 The Board can put the amount of security
3 in the water licence that it deems satisfactory and it --
4 and the Board can make a decision about whether it's
5 going to put the land-related security in a land use
6 permit or leave that -- leave those land use permits free
7 of security and rely on DIAND and BHP to sort out the
8 land related security through the environmental
9 agreement.

10 I think it's essentially the Board's call
11 there. We'd -- I think we'd prefer that the land-related
12 security be held in the environmental agreement in the
13 appropriate amount and not have essentially two (2)
14 instruments, or three (3) I guess in this case, two (2)
15 land use permits and an environmental agreement all
16 containing some kind of land-related security.

17 MR. JOHN DONIHÉE: Thank you, Madam
18 Chair. Those are my questions.

19 THE CHAIRPERSON: The Chair here. Just a
20 point of clarity. Yesterday BHP indicated they are
21 committed to providing some information or document and I
22 just want to ask our legal counsel if that has been
23 undertaken.

24 MR. JOHN DONIHÉE: Madam Chair, it was a
25 question from Dr. Hutchinson to Mr. Wen. And I -- I'm

1 told at the break that the answer was actually exchanged
2 between these two (2) gentlemen but, unfortunately,
3 that's not on the record. So I just wonder if maybe we
4 could have that answer on the record.

5 MR. MARC WEN: Marc Wen from Rescan.

6 So the question was the distance -- there
7 was a concentration shown on a table at 20 metres, 200
8 metres, in the Horseshoe and the question was the 200
9 metres, is it a -- a box around the discharge point or a
10 circle and the answer, it's a circle. And it's a circle
11 made of 20-metre boxes so it's a jagged circle. Thank
12 you.

13 MR. NEIL HUTCHINSON: Sorry, Neil
14 Hutchinson here from Wek'eezhi Board. So the total
15 diameter of this circle is 200 metres and it's centred on
16 the discharge?

17 MR. MARC WEN: Marc Wen, Rescan. No,
18 that's not correct. It's the radius. It's a 200 metre
19 distance from the discharge points.

20 MR. NEIL HUTCHINSON: Neil. Thank you.

21 THE CHAIRPERSON: Do we have any
22 questions from the Board Members here of INAC? Rita...?
23 Mike...? Joe...? We have -- it's 11:30. We'll continue
24 till lunch.

25 So the next presentation is North Slave

1 Metis Alliance.

2

3 PRESENTATION BY NORTH SLAVE METIS ALLIANCE:

4 MS. CHERYLE GRIEVE: Thank you. Cheryle
5 from North Slave -- Cheryle Grieve from the North Slave
6 Metis Alliance.

7 You all have a copy of the NSMA's written
8 intervention. And, unfortunately, I wasn't able to find
9 adequate time to put together a presentation for you.

10 So if -- if it's all right with the Board,
11 I would like to just briefly go over my -- our
12 intervention and add a few explanatory comments where I
13 think they may be needed.

14 Also for the benefit of members of the
15 audience who -- who may not be familiar with the publicly
16 available documents that I've referred to, I have a few
17 quotes I've gathered together. If I'm able to, I'd like
18 to read some of those.

19 The -- the first points that we mentioned
20 in our intervention where on the issue of consultation
21 and accommodation and we know that this is the
22 responsibility of the Crown.

23 But we also know that the Crown relies on
24 proponents to carry out some of the duties and the Board
25 is responsible for commenting on this in their reasons

1 for decision and bringing it to the attention of the
2 Minister that we've raised the issues.

3 We want to point out that there's a
4 difference between Crown consultation and accommodation
5 which is required based on Supreme Court of Canada
6 rulings about the rights of Aboriginal peoples who may or
7 may not have a recognized settlement or land claim
8 process going on.

9 This is based on the Constitution of
10 Canada and is the responsibility of the Crown. But there
11 is an additional responsibility that is the duty of this
12 Board and that is to ensure that adequate compensation
13 has or will occur.

14 And that's not based on Aboriginal rights
15 under the Constitution. That's based on existing water
16 rights for -- or existing rights for existing water users
17 who are occupants and owners of land, and stream users
18 and such under the Section 14(4)(b) of the Northwest
19 Territories Waters Act.

20 So just -- just to clarify that
21 compensation is one aspect of accommodation so there is a
22 linkage between compensation and Crown consultation and
23 accommodation.

24 Most specifically, if the Board would like
25 to note, page 13 of the Reasons for Decision for the

1 Sable, Pigeon, Beartooth environmental assessment, the
2 Board there recognized the North Slave Metis' evidence
3 that they had not been consulted adequately and confirmed
4 the importance of that consultation and accommodation.

5 But the Environmental Review Board did not
6 address the issue because they felt that it -- it was not
7 their jurisdiction so they didn't actually make
8 recommendations.

9 NSMA believes that the Board should
10 require confirmation of BHP's financial commitment to
11 deliver the benefits promised in the environmental
12 assessment as they're contained in the Environmental
13 Agreement, Socioeconomic Agreement and IBA because those
14 agreements constitute mitigation that is required for
15 this -- for the project to go ahead.

16 And Section 14(4)(d) of the Waters Act
17 requires the Board to be sure that the applicant is
18 financially responsible for carrying out all required
19 mitigation. So there is a linkage between mitigation and
20 security.

21 And -- and the mitigation is not all
22 contained in the water licence but the Board, we believe,
23 should ensure that the mitigation is going to occur, at
24 least that there will be financial responsibility for it.

25 And in our intervention we also mention

1 that -- the previous documents that NSMA has provided to
2 the public registry about our expectations for
3 consultation. And just to provide a little clarity, the
4 essential ingredient that has been missing is the
5 internal consultation.

6 We appreciate the efforts that BHP has
7 made and it's a great improvement over the past. There's
8 been a lot of individual NSMA members included in a -- a
9 number of different activities but the connection between
10 those individuals and the communities is missing.

11 There's no support for the distribution of
12 the information to the community. There is only
13 provision for information to individuals.

14 There's -- there's always been a limit of
15 one (1) or two (2) participants and there's not even
16 support provided to the First Nation, the NSMA, to go
17 through their proper internal process for selecting a
18 representative. And then there's nothing there for the
19 representative to distribute the information in the
20 community.

21 So, in fact, the community itself as a --
22 as a group isn't getting the information, just a few
23 individuals are, and then the community isn't enabled to
24 get together to form its opinion.

25 So this is a big problem because the

1 and being satisfied that adequate compensation is -- is
2 or will be paid. So there's, you know, an information
3 gap built into the process here.

4 We made the -- we made some comments
5 regarding the scope of the licence, as well. We -- we
6 wanted to make sure that the Board was directed to think,
7 or brought to the Board's attention that the part A(1)(c)
8 appears to unnecessarily restrict the Board's
9 jurisdiction.

10 The Board is entitled and mandated to
11 include in the licence any condition that it considers
12 appropriate. So when -- when the licence says this
13 licence is issued to -- is issued subject to the
14 conditions contained herein with respect to, it shouldn't
15 be a limited -- unnecessarily limited definition. The
16 licence conditions can be related to the appurtenant
17 undertaking, not just to certain aspects of that
18 undertaking.

19 And, in fact, you wouldn't necessarily
20 have to put anything in the licence saying with respect
21 to what because it's a water licence and you're only
22 going to put in conditions you consider appropriate, so
23 there's no need to define -- define it down in the
24 licence what it's related to.

25 Another -- another point in support of not

1 unnecessarily narrowing the -- what the licence is with
2 respect to, is that water isn't only found in water
3 bodies; water is in the ground. Water may be in the air.
4 We care about all of the water. And water moves and it -
5 - it soaks into things and leaks out of things. And
6 wastes can also form part of a process that affects the
7 use of waters, not just -- maybe the use of waters could
8 be affected even though the water isn't affected.

9 But wastes can form part of a process that
10 do affect waters without having been directly discharged
11 into water. So what we're arguing for is a wide
12 definition of the receiving environment and a general
13 consideration of where wastes -- what could be a waste
14 and how could a waste affect the use of waters, and
15 that's a broader consideration than just how could waste
16 affect water.

17 For example, Aboriginal people quite often
18 avoid using water based upon fear, public -- public
19 perception of contamination or simple mistrust of CCME
20 guidelines, for example, that weren't developed in
21 consultation with them.

22 Another example is yesterday when the
23 respected Chief mentioned that the caribou were good and
24 we can use them because they didn't go near the mine,
25 that this is the way that people often think, and it does

1 affect the use of waters if there's a perception that
2 they've been contaminated.

3 And furthermore, we haven't actually heard
4 anything about any of the terms and conditions in any of
5 the land leases which are supposedly protecting the
6 terrestrial environment. I don't think that we should
7 take it for granted. The information is not on the
8 public registry. But the Board does need to think about
9 the land, as well.

10 We had provided some more comments in our
11 intervention about, you know, examples of how a licence
12 is related to an appurtenant undertaking and not just to
13 an end of pipe discharge of waste or a mouth of pipe
14 sucking up of water.

15 The whole undertaking is licenced. The
16 need for the licence is based on the use of water, but
17 the licence regulates the undertaking.

18 And along the same line we also objected -
19 - or commented that the definition of "Act" provided in
20 the licence should say -- like, it's saying that the
21 water licence is issued under the Northwest Territories
22 Waters Act and in the licence "Act" is defined as the
23 Northwest Territories Water Act -- Waters Act in the
24 draft licence. But this is not correct because, in the
25 McKenzie Valley Renewable Resource Management Act, the

1 definition of licence is provided. And it is:

2 "Licence means a licence for the use of
3 waters or the deposit of waste or both
4 issued by a Board under the Northwest
5 Territories Waters Act."

6 And this part -- and this part where the
7 definition is, is Part 3 which deals with the
8 jurisdiction and ability of the Board to issue water
9 licences.

10 We -- we also go on later to mention how
11 the Sable Pigeon Beartooth project is not a separate
12 project but part of the larger project.

13 And when they were -- when an
14 environmental assessment was done it was to deal with the
15 change in a previously environmentally assessed process
16 due to switching of different lakes that were to be used
17 and different pits that were to be mined.

18 The Sable -- Sable Pigeon Beartooth
19 project is not a new project. It's an amendment to a
20 previously existing project and the wording needs to be
21 clear so that people don't get confused about what a
22 project is and what a project -- a part of a project is.

23 And we're very happy to see that the
24 licence will be amalgamated and hopefully soon all this
25 confusion will be cleared up.

1 It -- it's not -- it's not that difficult
2 or unusual to have different parts of one (1) licence
3 deal with different mine components. And, you know, each
4 pit could actually be considered a mine component, not
5 necessarily another project or another mine or another
6 phase or whatever.

7 But if each pit has a different
8 characteristic then they could have individual criteria
9 and conditions in the licence without having the need for
10 two (2) licences or two (2) separate sets of definitions
11 or anything like that.

12 We -- we also mentioned that with our
13 proposed definition or the definition that we support for
14 receiving environment then the AEMP would need to be
15 specifically made relevant to the aquatic receiving
16 environment; just to be clear, that it's not related to
17 all of the receiving environment.

18 We're also still, again, objecting to the
19 change in the abandonment and restoration plan, to call
20 it a closure and remediation plan.

21 The legislation for -- for the use of
22 land, a land use permit requires restoration. We don't
23 believe that external documents should be used to change
24 legislation.

25 We think the external documents should be

1 made consistent with legislation. If the legislation
2 were faulty, then it should be changed, but we don't
3 believe it is.

4 We think restoration is the appropriate
5 closure goal and should always be the aim for every
6 project and advance permission to not aim for that goal
7 should -- should never be given.

8 Every time that you're not going to aim
9 for restoration, there should be a really thorough and
10 rigorous explanation of why and justification and full
11 consultation. We don't want any government or board or
12 government agency giving people permission automatically
13 to not aim for restoration.

14 We -- we do recognize that there are cases
15 where it's not possible, but we don't want that
16 recognized -- we don't -- we don't want people to assume
17 that it's not possible and not try; we want them to prove
18 it.

19

20 (BRIEF PAUSE)

21

22 MS. CHERYLE GRIEVE: We've made a few
23 comments about security. The most important idea that we
24 hope the Board gets out of these comments is that the
25 mitigation that is required for this undertaking should

1 be included.

2 The Board has a responsibility to make
3 sure that's all that it -- that is that the -- that the
4 applicant is financially responsible for carrying out all
5 of the mitigation, and that goes through closure, as
6 well, and any unfunded liabilities in that area should be
7 covered by security.

8 And I'm not -- I don't think that we fully
9 understand how the different instruments add together
10 with the various forms of security that are held, and
11 where they're held, and who they're held by, and how
12 they're managed, but our main concern is that all of the
13 commitments of the project are -- are fully funded and
14 that adequate security is on deposit to ensure that they
15 do all happen.

16 And -- and I'll -- I think that someone
17 has already said something about this, but the current
18 financial crisis should provide good reason for the Board
19 to be, and for the Minister to be especially careful
20 about the form of the security.

21 We -- we do not want our environment to be
22 damaged and the taxpayers to have to pay for -- for the
23 damage and for us to have to live with the damage just
24 because some financial instrument is not good.

25 Later on in our intervention we discussed

1 briefly how we're not satisfied with blind and trusting
2 acceptance of CCME guidelines. We know that the CCME
3 guidelines have been developed almost all in the south,
4 almost all in agricultural areas or areas of deciduous
5 forest. We know that very few, if any, of the species
6 that have been used to develop those guidelines were
7 northern adapted species with our particular qualities
8 related to the environment that they've evolved in.

9 We want -- we would like to see a
10 justification of defensible credible justification
11 whenever guidelines developed elsewhere are used.

12

13

(BRIEF PAUSE)

14

15 MS. CHERYLE GRIEVE: We made some
16 comments about the use of traditional knowledge and the
17 involvement of communities in studies and monitoring, and
18 the point of those comments is that we -- we think there
19 should be firm guidance provided in the water licence to
20 BHP, that traditional knowledge needs to be incorporated.

21 It's not just a nice thing to have. It
22 needs to be incorporated into the studies. It has to be
23 designed into the studies and the best way to design it
24 in is to make sure the -- the research plan and the --
25 even the development of the research questions involve

1 traditional knowledge holders.

2 And these people should not be expected to
3 volunteer. They should be paid. There should be a
4 budget allocated to this. It should be scheduled in
5 advance, not a week in advance, long enough in advance
6 to, you know, have it in your scientific licence
7 application and do your budgeting.

8 And the communities need time to make
9 arrangements with people to do this. It is a form of
10 mitigation that must occur and the cost should not be
11 downloaded to the communities. The proponent should be
12 financially responsible for ensuring that this happens
13 and the Board should be satisfied of that.

14

15 (BRIEF PAUSE)

16

17 MS. CHERYLE GRIEVE: I think that I may
18 have read some of my comments out of order but I'm
19 finished and I will take questions.

20 THE CHAIRPERSON: The Chair here. It's
21 about five minutes to noon here so I suggest we go for a
22 lunch break now and then come back at about one o'clock
23 for questions to North Slave Metis Alliance.

24 I'd like to -- before we break for lunch I
25 just want to make a comment here, that everybody prepare

1 their closing comments during lunch break. Mahsi.

2

3 --- Upon recessing at 11:58 a.m.

4 --- Upon resuming at 1:15 p.m.

5

6 THE CHAIRPERSON: Good afternoon. Can we
7 call this Hearing back to order, please?

8 We left off after North Slave Metis
9 Alliance had made their presentation, so we will have
10 questions from BHP to the North Slave Metis Alliance
11 first.

12 Go ahead.

13

14 QUESTION PERIOD:

15 MS. LAURA TYLER: Thank you, Madam Chair.
16 BHP Billiton has no questions for the North Slave Metis
17 Alliance.

18 THE CHAIRPERSON: Is there any questions
19 from IEMA to the North Slave Metis Alliance?

20 MS. LAURA JOHNSTON: Thank you, Madam
21 Chair. IEMA has no questions for North Slave Metis
22 Alliance.

23 THE CHAIRPERSON: Any questions from
24 Environment Canada to North Slave Metis Alliance?

25 MS. ANNE WILSON: It's Anne Wilson. No

1 questions from Environment Canada, thanks.

2 THE CHAIRPERSON: Any questions from DFO
3 to North Slave Metis Alliance?

4 MR. BRUCE HANNA: Bruce Hanna, DFO. No
5 questions.

6 THE CHAIRPERSON: Any questions from INAC
7 to North Slave Metis Alliance?

8 MR. DAVID LIVINGSTONE: David
9 Livingstone. No, we have no questions. Yes, we have no
10 questions.

11 THE CHAIRPERSON: Any questions from
12 Board staff to the North Slave Metis Alliance?

13 DR. KATHLEEN RACHER: Kathy Racher, from
14 the Board staff. Cheryle, I just have one (1) question
15 for you.

16 In your intervention, in your section on
17 waste disposal, talking about the -- I think you were
18 talking about effluent quality criteria or the discharge.
19 You make a statement that says:

20 "We expect discharge criteria to be
21 based on an acceptable change from
22 baseline conditions."

23 And I'm just wondering if the NSMA has a
24 policy or some way of defining what acceptable change
25 from baseline is.

1 MS. CHERYLE GRIEVE: We don't have a
2 written policy, but we have a -- we have an internal
3 consultation policy. And we would expect a change to --
4 before we could call a change acceptable, we would have
5 to be consulted on the change, and -- and then the
6 community would decide what was acceptable.

7 And by the way, this would probably be
8 best done in a general fashion and not over and over
9 again for each specific water licence, so the development
10 of guidelines would be the most appropriate place to do
11 consultation on acceptable change.

12 DR. KATHLEEN RACHER: Okay, thank you. I
13 have no more questions.

14 THE CHAIRPERSON: Any questions from
15 Board members? Okay, go ahead, John, sorry.

16 MR. JOHN DONIHEE: Thank you, Madam
17 Chair. John Donihee for the Wek'eezhii Land and Water
18 Board.

19 Ms. Grieve, in August of 2008, you filed a
20 letter intervention on behalf of the NSMA with the Board.
21 The letter was dated August the 6th, 2008. And on page 3
22 of five (5) of that letter under the heading "Section 14
23 of the NWT Waters Act", you assert that the -- that NSMA
24 members are existing users of the water under the
25 Northwest Territories Waters Act.

1 And you also mention a requirement for
2 compensation for interference with the water rights of
3 NSMA members. And in that letter you say, and I'm
4 quoting here:

5 "It is impossible for us to estimate
6 the amount of compensation that will be
7 required for interference with our
8 water rights until we see how full and
9 final the restoration of the mine will
10 be."

11 And then in your intervention for this
12 hearing, dated February the 13th, 2009, on page 2 of 7,
13 under the heading "Accommodation and/or Compensation",
14 you repeat your assertion that there will be adverse
15 effects on the NSMA and members and, again, suggest that
16 NSMA is entitled to compensation for this interference
17 with your rights.

18 I wonder if you could advise the Board,
19 you know, whether you have any evidence of actual damages
20 as a result of these interferences that you're referring
21 to?

22 MS. CHERYLE GRIEVE: The evidence for
23 post mining for the closure period, the evidence will
24 exist in the future. For now, there are waters that are
25 not available for use. There's an exclusive land tenure

1 allocated to BHP which prevents NSMA members from even
2 accessing their water.

3 Bone Lake containment facility would be a
4 very good example of water that we cannot use for any
5 purpose whatsoever. I'm not exactly sure how much
6 evidence you would like or to what detail.

7 MR. JOHN DONIHEE: It's John Donihee for
8 the Board again. I take it then when you're talking
9 about estimating compensation in relation to full and
10 final restoration of the mine that this is something that
11 you really -- that NSMA would really not be able to put
12 any numbers on or really to define very clearly until
13 such time as BHP is finished and, you know, you've had a
14 chance to see how successful the restoration of the site
15 has been.

16 Would that be a fair way to characterize
17 what you said in your most recent intervention?

18 MS. CHERLE GRIEVE: Yes. Cheryle
19 speaking from NSMA.

20 That would be fair. The estimate we won't
21 know for sure until after the fact, but the estimate can
22 be made a little bit more precise once the closure plan
23 is made.

24 MR. JOHN DONIHEE: John Donihee again.
25 So it -- I guess what I'm taking from that, Ms. Grieve,

1 is that you don't have any kind of firm estimate to offer
2 right now but that at some time in the future you're
3 reserving the right to come forward, you know, as part of
4 a Board process and put some kind of an estimate forward
5 to the Board.

6 Is that -- is that how you're trying to
7 approach this?

8 MS. CHERYLE GRIEVE: Yes. I'm just
9 trying to fulfill my duty to assert our rights and get
10 them on the public record rather than to foreclose our
11 options.

12 MS. JOHN DONIHEE: John Donihee. Thank
13 you very much, Ms. Grieve.

14 Those -- those are my questions, Madam
15 Chair.

16 THE CHAIRPERSON: Thank you. Do we have
17 any questions from Board Members? Rita...? Mike...?
18 Joe...?

19 Okay that is all the questions for North
20 Slave Metis Alliance. We have an opportunity to hear
21 comments from the public. (NATIVE TONGUE SPOKEN)

22

23 (BRIEF PAUSE)

24

25 THE CHAIRPERSON: (NATIVE TONGUE SPOKEN)

1 (THROUGH INTERPRETER INTO ENGLISH)

2

3 ELDER PHILLIP HUSKEY: With this we do
4 not want to fight with from each other when we have a
5 meeting like this. It's a public notice. We're wishing
6 that we could work well together, have a good working
7 relationship.

8 Here I'm standing. I have been a chief in
9 the past for six (6) months here for this community,
10 Wek'eezhii. I am 84 years old. 1939, that was the time
11 I was working at Port Ridum (phonetic) in the Sahtu area.
12 There was a mine there at that time I meant to say.
13 1939, the Yellowknife Mine opened. It was at the same
14 time that these two (2) mines were opened.

15 But at those days we did not know anything
16 about a water licencing. Things just happened, were put
17 in place on the land there. That's how they opened these
18 mines even in Yellowknife and other elsewhere.

19 The things we know and we understand we
20 did work with what was only what we could do with our
21 hands not what we can imagine or think about.

22 They had a railroad for the mine. I
23 remember taking those wasted rock and dumping it into the
24 -- the lake with the trucks. This was what's happened
25 with that mine.

1 And also I could see the waste rock being
2 used to make a wharf, a boat landing. And also they had
3 placed a large can for fuel at one part of land. This
4 was then poured in all that waste rock that seeped into
5 the lake.

6 Today what is these people experiencing
7 who are living nearby in that area? I know how -- I know
8 things about this. Many people who contract this disease
9 of cancer did not live very long. They all perish from
10 this disease. We do know that. I'm sure that any one of
11 you understand this. Even the Board understand this.

12 As for the Rayrock Mine, it was a similar
13 thing that happened there. There -- that was really
14 tremendous. There were eighty-five (85) members who had
15 worked there who are Elders who had perished, who have
16 died.

17 All the waste rock, the water seep into
18 the river. You can see all the trees that on the
19 shoreline are all dead. Even the animals, the beaver,
20 muskrat, all the animals that we depend on, they -- they
21 replaced the money we might have had with these animals.

22 There many fish that has died in that
23 area, the animals, even muskrats, moose, caribou. All
24 the animals we had depend on have died in that area --
25 from that area.

1 So you have to be cautious and -- and work
2 together in making things better for us. We do know the
3 mines when there's a closure, how much money would it
4 take to do reclamation work?

5 People want enough money to do this and we
6 do not want any problems from this mining. We don't any
7 disease from this mining. That's for Rayrock. There's
8 another mine that's been opening.

9 There are three (3) -- three (3) minerals
10 that we know that will be extracted from these mines. I
11 do not want no licence being granted to these -- this new
12 mine that's coming up.

13 Personally, I feel I will -- we cannot
14 only depend on money. Money is not the only important
15 things. Animals are important to us. This is what gives
16 us life. Other things will be gone.

17 All these animals, the birds, the rabbits,
18 every species of animals, this is part of our life. We
19 were raised with these animals. We cannot eat money
20 alone. We can't take a bite out of it and eat it.

21 We need to work together. We need to have
22 a good working relationship. We need to refine things
23 together. We have to love one another and understand
24 each other.

25 We have to be happy and have harmony among

1 ourselves to -- to work together if things are going to
2 change. The contamination of the water or the land, it's
3 no good at all.

4 I do not like this at all. We do not need
5 to hide things from each other. If we -- if they want to
6 be granted a water licence, there'll be three (3) -- you
7 have to mark the snow and the snow water. They can use -
8 - make use out of snow water. Not to determine that it's
9 not intimidate. We -- we want you all to work closely
10 together. And it's not happening, the drastic changes or
11 anything that might contaminate our land or the water.

12 And there are people that are working with
13 you. I'm sure that you want to share all the information
14 with them and work with them. That's the reason why you
15 have our members work with you.

16 But as for the Elders, these Elders should
17 also be included in your work. I'm not saying I should
18 take part in this work, but the Elders are the Chief of
19 the ships that do work with -- with the company.

20 We are looking forward to having a good
21 working relationship here. The land that you're going to
22 use, when it's complete, when the mine is closed, you do
23 reclamation work to give good work.

24 Today, we do know that the migration
25 pattern are hampered, the migration path for the caribou.

1 That's the reason why we don't have caribou coming to
2 your area anymore. It goes to a different direction.

3 I do have many sites with the caribou on
4 migrating path. Normally, the migration of caribou has
5 reached here. Today, it's finding a different course of
6 the migration because you have hampered the migration
7 path with the mine being opened.

8 So what we're saying here is that the
9 reclamation is really important. After the closure of
10 the mines, that reclamation is very important to us. If
11 things go wrong, you'll know that it's not going to be
12 just for now, but for the future people to come. It's
13 not for people like me.

14 Much like my wife and my children, I'm
15 hoping that they will have a good life. That's the
16 reason why we speak. I'm not saying this with anger.
17 What I want is a good work relationship. That's what I
18 want for you all here. That's all I want, to share this
19 time.

20 THE CHAIRPERSON: Thank you, (NATIVE
21 TONGUE SPOKEN).

22 Alphonz Apples is the next speaker.

23

24 (THROUGH INTERPRETER INTO ENGLISH)

25

1 ELDER ALPHONZ APPLES: Thank you. We, the
2 Tlicho members, we never had our own mine. We have never
3 talked about the land or the dirt that we have. The
4 mines that exist in our area, we do know about it, just
5 like it's been written for us, although we do write.
6 How many things are evident. We do understand this. You
7 sit at the tables like this. It seems that you all want
8 money.

9 We, as our future members, we want to have
10 -- drink good quality water. We want this peace on --
11 well, animals that are healthy. We want to be able to
12 rest and camp on the land.

13 We do not really need money. We do not
14 want money. Today, being a Tlicho member, when you talk
15 about mines it seems very difficult for us. It gives us
16 headaches in the future through the existence of the --
17 the Tlicho and this, the new generation to come.

18 We are worried about this generation to
19 come. I want you to understand this. I have given you
20 the -- the truth here, which I guess I did when I spoke
21 and I said -- stated that I worked for a couple of mines
22 today.

23 I worked at a couple of mines. We do know
24 there are many -- much money to be made from the mines.
25 You see many good things in the future. Twenty-five (25)

1 years, what's going to happen?

2 We, the Tlicho members, we do not want to
3 end up with garbage. Once there's a closure of the mine,
4 who is going to look after this, the caribou, the
5 wolverines, fox?

6 I'm sure they are the one -- be the ones
7 who look after the -- the empty camp once the closure of
8 the mines. I don't want that. So today, the two (2)
9 months that we're -- I reflect on the true mines, BHP and
10 DIAVIK Mine.

11 There's a pit mine there. In the future,
12 I'm sure they're going to have more pit mines. You see
13 fencing, eight feet fences. If you could create a fence
14 around these -- these mines and have the -- the gates, at
15 least why I'm saying this is the first -- the first
16 appearance of this areas, I have worked there. When it's
17 windy, you cannot go out at times; it was blizzard -- it
18 would be blizzard.

19 But the animal does not stand in the way
20 of the blizzard; they go wander on the land. They hunt
21 and to migrate and follow the old roads. So the garbage
22 and BHP, the pit mine that you have, we know it's quite
23 deep. We want you to create a fencing around this area
24 and a gate so that no... (SOUND SYSTEM CUT OFF)

25 THE CHAIRPERSON: Mahsi, Alphonz.

1 (NATIVE TONGUE SPOKEN). Edward Weyallon.

2

3 (THROUGH INTERPRETER INTO ENGLISH)

4

5 ELDER EDWARD WAYELLEN: Yes, my name is
6 Edward Weyallon. I am not going to speak my speech a
7 little too long. In the past, we -- we were unaware of a
8 lot of things.

9 There are a lot of people that have work
10 at the Rayrock Mine just like a lot of Elders who were
11 alive at that time, just like my late friend, Ernie Camso
12 (phonetic) and so forth. Now that the tailings flow from
13 the old Rayrock Mine, and also that there is no people
14 that live around the Marion (phonetic) River. There used
15 to be a lot of people around -- around the Marion River.
16 And sometimes in the summertime we used to get here --
17 there used to be a lot of tents, a lot of tents.

18 In 1955, the Rayrock Mine, the Rayrock
19 mine, they said that the uranium was supposed to being
20 built to use to -- they did not get the reclamation.
21 There were a lot of tailings that went to.

22 We used to walk in some of these tailings
23 at work. And also, the tailings -- the trees around the
24 tailings had died off. And also, the -- and also it
25 flows all the way to the Histop (phonetic) Lake area.

1 It also -- it also flows, that Marion
2 River. A lot of people have died. When I say this, I'm
3 telling the truth. All of our Elders that have died, all
4 the people that have worked there, none of them exist. I
5 have worked with them. Just like my friend, Isador
6 (phonetic), there is only about a little over ten (10)
7 people that are alive today. I was -- the Elders that
8 have raised me have both passed on.

9 At that time, there used to be a lot of
10 Elders. Even the priests tell -- used to tell me there
11 were a lot of -- there used to be a lot of Elders, but
12 now it flows.

13 But a lot of people died of cancer because
14 of uranium mine tailings that flowed. But I do not want
15 to talk too long, so this is what has -- what -- what has
16 happened, but now that's -- but also, if you look at the
17 Colomac Mine, the tailings have been fenced off, but some
18 of these pits should be done at the same thing as some of
19 those both BHP and DIAVIK so there will be no animals
20 that will fall into the pit. So we will be happy to --
21 to see if you guys could fix some of these open pits.

22 There are a lot of -- a lot of these young
23 people that are working at the mines -- out in the mines.
24 But some of our young men that are working there, our
25 kids that are working there, but now that -- but now

1 there have been a lot of layoffs. On the first time the
2 mine opened, we have heard that there -- there used to be
3 -- there used to be over -- supposed to be over two
4 hundred (200) people that's supposed to be working for us
5 with the BHP that opened.

6 If you look at the workers, there are not
7 that many people involved, people that are working there.
8 But now that the -- there seems to be a lot of more white
9 people working there with less of our own people because
10 of the layoff.

11 Now, that's -- this is what is happening
12 now. To this, I am not too happy. I -- I do not like it
13 at all, having to lay off our own people.

14 But in 1955, we used to work underground.
15 We used to work in some of these tailings, but then we
16 weren't informed of all these contaminant and dangerous
17 stuff, but a lot of our people have died.

18 In 1950 -- 1955 and '56, I have worked at
19 the -- at the Rayrock uranium mine. At that time, I did
20 get -- I got married then. It's been fifty-two (52)
21 years since I've been married. But next April, this
22 coming April, will be the fifty-three (53) years of being
23 married.

24 But at this time, I just want to thank you
25 for giving my speech, the concerns and issue that I

1 shared with you. So at this time...(SOUND SYSTEM CUT
2 OFF)

3 THE CHAIRPERSON: (NATIVE TONGUE SPOKEN).
4

5 (BRIEF PAUSE)
6

7 THE CHAIRPERSON: (NATIVE TONGUE SPOKEN).
8 Since we have no comments from the public, we will go to
9 closing comments now. We will hear our first closing
10 comments from IEMA.
11

12 CLOSING COMMENTS BY IEMA:

13 MS. LAURA JOHNSTON: Thank you, Madam
14 Chair. Laura Johnston, IEMA. Again, the Agency thanks
15 the Board for the opportunity to present out views
16 regarding the removal -- the renewal of the Sable Pigeon
17 Beartooth licence. Sorry about that.

18 A few topics came up during the discussion
19 of the last day and a half that the Agency would like to
20 address.

21 First, there was considerable discussion
22 regarding the need for and the benefits of plume
23 dispersion modelling in understanding the potential
24 impacts of discharge from Two Rock Lake into Horseshoe
25 Lake.

1 The Agency would like to suggest that this
2 work be included in a formal way in the licence, perhaps
3 under the -- the part that refers to conditions applying
4 to studies.

5 It might also be useful to include a
6 requirement for detailed information regarding the design
7 of the outlet, diffuser, whatever it may be, especially
8 regarding the potential impact on fish habitat in the
9 immediate vicinity of the discharge.

10 Second, it might also be useful to include
11 a clause which confirms the understanding that discharge
12 will occur only during open water. That seems to be our
13 recollection of the discussion but there is no formal
14 clause currently proposed.

15 Finally, there's been considerable
16 discussion regarding the way forward in addressing the
17 establishment of water quality objectives and criteria
18 for the mine.

19 The Agency repeats its recommendation that
20 all parties move forward as quickly as possible. If it
21 would be helpful to the Board, the Agency would be
22 pleased to give further thought to this matter and
23 provide our comments at a later date outside the current
24 licensing process.

25 And with that, mahsi.

1 THE CHAIRPERSON: Next Intervenor to
2 provide a closing comment is Environment Canada.

3 MR. BRUCE HANNA: Thank you, Madam Chair.
4 The following closing comments will be combined between
5 Environment Canada and DFO. And if it's okay, I would
6 start.

7 THE CHAIRPERSON: Go ahead, recognizing
8 Environment Canada and DFO are going to make a joint
9 submission.

10

11 CLOSING COMMENT BY ENVIRONMENT CANADA AND DEPARTMENT OF
12 FISHERIES AND OCEANS:

13 MR. BRUCE HANNA: Both Environment Canada
14 and DFO look forward to working with all parties to
15 assess new information as it becomes available to confirm
16 which site specific water quality objectives and effluent
17 quality criteria are appropriate.

18 We're pleased that BHP Billiton is
19 amendable to this process. We agree with INAC that the
20 goal should be continuous improvement and that effluent
21 quality criteria chosen need to be reflective of the
22 Horseshoe Lake environment.

23 We also agree that, as part of a
24 precautionary approach, nitrate should be added as an
25 effluent quality criteria pending submission of further

1 supporting documentation from INAC.

2 MS. ANNE WILSON: It's Anne Wilson with
3 Environment Canada. And just to continue on, the two (2)
4 departments support the suggestion from INAC that the
5 regulators look at ways to develop chloride water quality
6 objective possibly as a pilot project, and in so doing
7 test a process that has broader applicability for setting
8 objectives rather than on a project basis but on a more
9 regional basis.

10 To this end, Environment Canada and DFO
11 are willing to help co-ordinate and provide in kind
12 support for this.

13 In closing, I would like to thank the --
14 we would like to thank the Board and the community of
15 Behchoko as always for their outstanding hospitality.

16 THE CHAIRPERSON: Closing comment from
17 INAC.

18

19 CLOSING COMMENT BY INAC:

20 MR. DAVID LIVINGSTONE: It's David
21 Livingstone for DIAND. Well you've heard the -- the
22 discussion this morning. It seems to me that the key
23 issue remaining revolves around the effluent quality
24 criteria both the ones that are proposed and the process
25 for getting to more -- more confidence in criteria that

1 will, in fact, be protective of the environment once
2 discharge begins.

3 So the -- the bad news is that we're not
4 as confident as we would like to be. And we haven't got
5 a great deal of additional advice at this time that we
6 can provide to the Board.

7 The good news is that -- that we have time
8 to become more confident and the -- I think the -- the
9 mood in the room is -- is certainly one of collaboration
10 and inclusiveness.

11 So as we go down the process of gaining
12 confidence in the -- the criteria that will be applied I
13 think we need to go back to what it is we want to see in
14 the environment in this particular area and look at the
15 site specific requirements, the best science that we have
16 available to us, the values that the -- the communities
17 want to see reflected and -- and work together to develop
18 water quality objectives, not just for -- for chloride
19 but for all parameters, and then from that point, back up
20 to the -- the criteria and -- and make sure that -- that
21 we have, in fact, the best evidence to support those
22 criteria that we -- we can and recognize that -- that
23 evidence and issues and concerns may change over time.

24 So I -- I want to say that I really do
25 appreciate the relatively new spirit of co-operation and

1 collaboration from BHP Billiton. We welcome that. It's
2 been -- it's made a noticeable difference in the work
3 that we've done with the company over the last couple of
4 years.

5 And it certainly has made life easier, if
6 not more fun, at least easier for all of us. We can --
7 we can feel pretty good about what progress has been made
8 and feel pretty confident that we can make even more
9 progress in the future.

10 We need to, as I said, come up with some -
11 - some effluent quality criteria that we can all defend.
12 And it's not just, you know, that's -- it doesn't just
13 end when the Board establishes the criteria but the --
14 the licence needs to be signed by the Minister. And --
15 and this department needs to be able to tell the Minister
16 that we have confidence, as well.

17 And the -- the company needs to -- to be
18 sure that -- that the criteria meet its needs and the
19 community needs to be sure that -- that in the end the
20 land and the water will be left in a state that reflects
21 their needs.

22 So we need criteria and we need a -- a
23 very precise monitoring program that will enable us to
24 track the effects and determine the -- the significance
25 of those effects and -- and whatever steps that we need

1 to take to address those effects.

2 We need to employ the precautionary
3 principle at all times. We need to be careful and
4 respectful. We need to recognize, and this is a phrase
5 that comes up more and more, that we -- we borrow this
6 land. We borrow it from our kids and their kids. And we
7 need to -- to treat it accordingly. So it's not a
8 trivial exercise, it's a -- it's a very important
9 exercise and we're certainly getting better at it. But
10 we can -- we can continue and we must continue to
11 improve.

12 So we want to -- to develop projects and
13 programs that -- that provide -- that result in minimal
14 harm to the environment and maximum benefit to the people
15 in whose backyards these activities take place. And we
16 want to leave the land in a state that will meet the
17 needs of our kids and their kids.

18 So in -- in concluding I guess I want to
19 echo the thanks for the hospitality. It's always a
20 pleasure to -- to come to Behchoko and particularly a
21 pleasure to, and a privilege, to sit in front of this
22 Board.

23 It's -- it's, I think, a real sign of the
24 evolution, a positive evolution of the -- the regulatory
25 process in the Northwest Territories that we have a Board

1 like this one supported by the staff that this Board has
2 and setting the standard for other Boards making --
3 setting the path for other Boards to follow.

4 And I think that this Board can -- can be
5 very proud of the work its done and certainly we're very
6 appreciative of the -- the work that the Board has done,
7 the Board staff has done and -- and the work that the
8 Board and staff will be doing to -- to ensure that
9 collectively we get to where we want to be.

10 I want to thank the interpreter, the --
11 that voice that's always prodding us and -- and
12 encouraging us to slow down, speak clearly and perhaps
13 the guy that doesn't get enough credit. So thank you
14 very much and mahsi cho.

15 THE CHAIRPERSON: Mahsi, David. Any
16 closing comments from North Slave Metis Alliance?

17

18 CLOSING COMMENTS BY NORTH SLAVE METIS ALLIANCE:

19 MS. CHERYLE GRIEVE: Cheryle Grieve from
20 the NSMA. As we described in our intervention, we -- the
21 NSMA just doesn't have the capacity to deal with all the
22 issues of importance in the renewal of this water
23 licence.

24 So we have focussed on the most important
25 issues, which we believe are recognition and respect for

1 NSMA's aboriginal and treaty rights, which are protected
2 by the constitution; recognition and respect for NSMA's
3 existing water user rights, which are protected under the
4 Waters Act; the importance of community involvement for
5 good project management, but also out of respect for
6 those existing rights during the entire project but
7 especially in the establishment of environmental quality
8 objectives now and at closure; and lastly, our issue of
9 the connections between licence requirements, mitigation
10 measures, and financial responsibility, again, especially
11 at closure.

12 We appreciate the efforts of the other
13 Intervenors, the efforts of the company, the patience and
14 understanding of the Board, the translators, and the
15 hospitality of the Behchoko community.

16 Mahsi cho.

17 THE CHAIRPERSON: Mahsi, Cheryle.

18 Closing comments from BHPB?

19

20 CLOSING COMMENTS BY BHP BILLITON:

21 MS. LAURA TYLER: Thank you, Madam Chair.
22 BHP Billiton wishes to take this opportunity to thank the
23 Board members, the members of the Behchoko community, all
24 the Intervenors, the Board staff, all of the support
25 staff, and the public for what BHP Billiton considers to

1 have been a constructive and informative public Hearing.

2 While the nature of this Hearing, as
3 indicated by Madam Chair in her introduction yesterday,
4 was informal and collaborative, it is also a Hearing
5 before a quasi-judicial body, the Wek'eezhii Land and
6 Water Board, and the principles of procedural fairness
7 and fundamental justice are applicable.

8 BHP Billiton's current water licence in
9 respect to the Sable, Pigeon, Beartooth projects expires
10 in August 2009. If BHP Billiton is to continue to
11 operate the mine site, which also benefits the
12 communities in which we operate, it needs a renewal of
13 its current licence with terms it can operate under and
14 that provide longer term certainty, allowing it to make
15 appropriate investment and operational decisions.

16 For BHP Billiton, therefore, this process,
17 which started with the renewal application being
18 submitted on March 31st, 2008 and which cumulated with
19 this public Hearing, is vitally important.

20 As outlined in BHP Billiton's written
21 intervention and as reiterated in our presentation and
22 oral commentary at this hearing, BHP Billiton is seeking
23 a renewal of an existing licence, and not a new or
24 original licence.

25 Among other legislation, sections 18, 21,

1 and 29 part 3 of the NWT Waters Act apply to this renewal
2 application. Section 18 states the Board may renew a
3 licence with or without changes to the conditions of the
4 licence.

5 Section 29 part 3 states that:

6 "...a licence...that has been
7 renewed...shall...be deemed to be a
8 continuation of the original
9 licence..."

10 It is BHP Billiton's strongly held view
11 that while the Board has the jurisdiction and the duty to
12 order changes to the original licence if evidence is
13 presented during the renewal application process warrants
14 it -- and it warrants it, in the absence of such evidence
15 the Board should simply renew the existing licence.

16 As mentioned by Mr. Donihee, this is a
17 legal process and there is an onus on the Intervenors to
18 comply with the Board's directives and processes
19 regarding presenting evidence within ordered guidelines.

20 The onus is not on BHP Billiton to defend
21 the terms of its current licence unless BHP Billiton is
22 seeking to change a term or unless an Intervenor or the
23 Board itself has raised a concern, at least in the case
24 of an Intervenor that has provided evidence in support of
25 the term amendment it seeks.

1 In relation to the current licence, the
2 McKenzie Valley Land and Water Board, a predecessor of
3 this Board, issued the current licence only after an
4 environmental assessment had been carried out and only
5 after the community, government, regulators and other
6 leaders decided that mining at this site was beneficial
7 for the community and the terms of the current licence
8 protected the environment and human health.

9 As Mr. Donihee mentioned, BHP Billiton
10 accepts all the terms of its current licence except for
11 the specific changes that we have requested.

12 And BHP Billiton respectfully submits that
13 none of the Intervenors have presented evidence upon
14 which the Board could rely in order to change other terms
15 of the licence including the EQCs and, as a result, those
16 terms of the current licence should be renewed.

17 INAC has stated that they are uncertain
18 about the EQCs both existing and the suggested changes
19 but have brought forward no evidence to substantiate this
20 uncertainty.

21 Regarding ammonia, BHP Billiton relies on
22 the site specific work from Dr. Chapman presented in the
23 renewal application, and our recommendation regarding
24 ammonia to our hearing has been accepted by IEMA,
25 Environment Canada and DFO.

1 For zinc, INAC has not challenged the site
2 specific work BHP Billiton relies on from Dr. Chapman
3 that's been presented and circulated in the WAMP. Our
4 EQC for zinc, to our hearing at this public hearing, has
5 been accepted by IEMA, Environment Canada and DFO.

6 No party has put forward any suggestions
7 for a nickel EQC apart from our suggested approach to
8 derive one.

9 For nitrate, BHP Billiton has relied on
10 the IPS standard after confirming with the author of the
11 report that it was appropriate to do so. Our approach to
12 monitoring nitrate rather than installing a new EQC into
13 the licence to our hearing at this meeting was supported
14 by IEMA.

15 In addition, BHP Billiton objects that
16 additional nitrate evidence has been requested by Board
17 staff post public hearing which will not be available to
18 be discussed at a public hearing and may ultimately
19 extend the renewal process.

20 So in closing, I really wanted to
21 reiterate that BHP Billiton as a global mining company
22 has a commitment to ensuring zero harm to the environment
23 and building win-win relationships in every community
24 that we operate in. And our charter reflects this from
25 the very top of the company right the way down to the way

1 we do business in the operations.

2 We will not proceed with a project that
3 cannot comply with any of our regulations and licences,
4 and that is something that management of the Ekati mine
5 passionately believes in and will follow through on.

6 We are a proud member of the northern
7 community, proud of the friends and the relationships
8 that we've built up over the last ten (10) years and we
9 wish to continue to remain a member of the community well
10 past the end of our mine life, which is currently at
11 2020, and into our vision of still being here at 2040.
12 Sable Pigeon Beartooth is in integral part of the
13 stepping stones along that vision to be here at 2040.

14 This renewal is important and is required
15 so we can continue to provide the benefits to the north,
16 as originally envisaged during the environmental
17 assessment and a subsequent approval process.

18 The changes we've requested reflects our
19 ten (10) years of experience and us using the data that
20 we have to request changes. We've worked hard to listen
21 to suggestions from communities, from regulators, from
22 IEMA, from operators at the mine in order to make sure
23 that we can put forward the best changes that we can.

24 We'd like to thank the Water Board and its
25 staff for their profession and courteous approach. I

1 think the process has been well organized and is awesome,
2 particularly when I look back to the main licence renewal
3 that was carried out into the McKenzie Valley Board.

4 This Board is -- is -- I have to echo
5 David's -- David's sentiments -- is light years ahead and
6 I think can be held up as an example of how to do
7 business as opposed to one (1) that is just generally
8 criticized.

9 So I congratulate and acknowledge the work
10 that not only the Board staff have put in over the last
11 few years, but also the work that the Board themselves
12 put in to make sure that they are informed.

13 And finally, I would like to say a huge
14 mahsi cho to Behchoko for having us here for the last two
15 (2) days and for their awesome community spirit and for
16 the -- for -- for basically putting up with us taking
17 over their hall for two (2) days. So I think that's been
18 -- I think that's something that everyone appreciates
19 here.

20 So, thank you again and that concludes our
21 final comments.

22 THE CHAIRPERSON: Some of the Board
23 members, or all of the Board members want to say a few
24 closing comments, as well, too, so we will start with Joe
25 Rabesca.

1 MR. JOE RABESCA: Mahsi, Madam Chair.
2 And this is my first hearing. I'm not used to sitting
3 here. Madam, I hope you can forgive me for saying this,
4 but I'm used to sitting over there, speaking over there.
5 Now I'm over here, so I haven't said nothing all the way.

6 But let me say a couple of things in my
7 own language, Madam Chair. I want to use a translator.

8

9 (THROUGH INTERPRETER INTO ENGLISH)

10

11 MR. JOE RABESCA: Yes, thank you. We have
12 -- we have heard a lot of really good things, a lot of
13 good positive things. We have heard nice and clear.

14 But today -- today, we're not here to make
15 a decision, but -- but of how -- but how we got here to
16 how the Board -- but since 1980 to this day, the BHP have
17 gotten here a few years ago.

18 From then on, we have -- we have worked --
19 we have worked with the BHP. Then we have worked with
20 DIAVIK Diamond Mine, then the other mines. Well, that's
21 -- that's when the Elders speak. They are very concerned
22 about other mines when the Elders speak.

23 But today we have touched on a number of
24 things while I -- while I sit here because we did the
25 traditional hard work of -- of the mine.

1 But where the BHP mine exists, I've hunt,
2 fish and trapped. We used to go that area. And also was
3 vehicles from the winter road around the winter lake we
4 used to go to Kennedy Lake, back in Corigin (phonetic)
5 Lake, Mijoli (phonetic) Lake, that this is how we used to
6 travel past Wek'eezhii.

7 That is a traditional trails. There are
8 some -- that's why you see some rocks on top of each
9 other and also at the -- those Elders have made a mark
10 and some of those are traditional trails from...and also
11 right -- right close to the ocean there, that's how far
12 they used to travel. That's why when they talk about the
13 land, you know, when they talk about the land, they talk
14 about the absolutely truth.

15 And when we look at this kind of things
16 and what today -- today, we want to take -- we want to
17 take care of the land and also we want to -- to create
18 jobs, as well.

19 But if we listen to each other, help one
20 another, we have to trust one another. Building trust is
21 very important. That's what I'm basically saying, to
22 build trust.

23 But if we trust one another, have a good
24 working relationship, it will be good for the Water Board
25 and it will also be good for all parties and all of --

1 all of our own people.

2 If we think we are the boss, we'll have to
3 do things my way, things will not work. But we have to
4 have a good working relationship with each other. That
5 is why when we talk to each other, just listen to each
6 other carefully and to verbally support one another.

7 Just like the Board staff and -- and also
8 that sometimes -- sometimes there are some technical
9 issues that we talk about. Sometimes you talk about some
10 of these technical questions, what's going to happen.

11 But this kind of information is important
12 to us, as well. But today as I -- as I sit here I'm in
13 the middle of everything here. And also -- and also by
14 listening -- by listening to each other what was the
15 positive we can do. We -- we are here to make a decision
16 based on what we hear.

17 And -- but I want to talk back but I might
18 be a little off the topic, but years ago when I -- when I
19 was a chief and also the people used to come over from --
20 from London, from Mexico, that used to visit us. And
21 people from Australia used to -- but some of these people
22 have diamond mines. They used to come here. Violet
23 knows pretty well of where the issues that I'm talking
24 about.

25 People used to come to talk to us from

1 overseas. When we look at this kind of things but the
2 other lands are not -- the other countries are not
3 because they grow things.

4 It is a hot country, warm country, but
5 over here we cannot build a farm or grow things. But in
6 order to do things we have to but then we can't -- we
7 can't do the same thing, we can't do the same thing the
8 other countries are doing because our country is totally
9 different from their country.

10 But you have to look at how our people
11 live. What happened to -- to our wildlife? What's
12 happening with it? We have to look at everything and to
13 -- to talk, to exchange ideas and talk about certain
14 things that we can do.

15 What is it that we can do to make any
16 decisions? But there are times that we not -- cannot
17 make the -- but then once the mine is there, will be
18 there for a long time. Even after we are gone the mine
19 could still be here after we are gone.

20 So a decision that may have to be -- so,
21 well, we are here just to listen, to -- to listen. We
22 are here to listen. In order -- you know, it is nice to
23 teach each other, it is always nice to teach other.

24 We also -- and we teach other. If we
25 teach other in a positive way we can use it so many -- so

1 many years down the road. If we don't do that -- but I
2 do not want to talk a little too long but there are --
3 there will -- there will be some other people speaking.
4 It is something that I wanted to share with you. Every
5 person that have spoken in this building, thank you. By
6 listening to you I've been taught very well.

7 But when I was on the other side I used to
8 complain and get mad a lot but now I'm here as I listen
9 but people -- when people are speaking they're not
10 getting mad or angry. What they basically say, let's
11 have a good working relationship.

12 But that's what I used to say when I used
13 to -- when I was on the other side. I want -- and also
14 we worked with a very dangerous chemicals to make sure
15 that none of our wildlife -- you know, if our land, the
16 wildlife is ever contaminated, you know, we are not here
17 to grow anything or to even build a farm of any sort.

18 Madam Chair, so every -- everything will
19 be up to Madam Chair, what -- what we're going to be
20 doing not only for now but -- but at this time maybe
21 that's all I may -- may say for now.

22 But we may reconvene and sit like this
23 again some time. We will probably -- yes, my friends, my
24 people, even the ladies, I would like to say thank you to
25 each and every one of you from the bottom of my heart.

1 Mahsi cho.

2 THE CHAIRPERSON: Thank you. Mike
3 Nitsiza...?

4 MR. MIKE NITSIZA: Thank you, Madam
5 Chair...Wek'eezhii Land and Water Board. I've been
6 appointed by the -- the Tlicho government and I'm very
7 fortunate and happy to be here among you.

8 This is my first Hearing and I want your
9 confidence and trust that I'll make a good and right
10 decision for on behalf of everybody.

11 With that -- when I listen back here I
12 observe and listen to the guest speakers and
13 presentations that has been made. I listened to lots of
14 concerns. The concerns of the environment have brought
15 us together here.

16 The Elders, who's always advised us to be
17 careful with the land that we live in, the water we drink
18 from, the air that we breathe in, and ask us, invite us
19 not to take advantage of anything that live among us such
20 as fish, bird, insect, animals. They have a purpose in
21 life here to be with us. We've got to learn from them.
22 And why that the Elders always say be careful and make
23 the right decisions.

24 And when I hear about the quality of the
25 water, EQC, there's a change that they have discussed,

1 changes of tomorrow. We don't even know what changes
2 tomorrow is. No one does.

3 But as an educator, I have been involved
4 with the cultural and other opportunity within the
5 communities where I've been. I'm a school community
6 counsellor by trade. And when you talk about change in
7 society, the education is preparing an individual for an
8 ever changing society in the world.

9 So we -- we got to digest and learn from
10 the changes and live with it. Whether we make a right or
11 wrong decisions, some may be pain but we have to continue
12 on.

13 And I thank the staff and everybody that
14 participated in this hearing. And some of you come a
15 long ways and gone through university to become an expert
16 at what you do. It takes a long time to be here, and --
17 and I thank you for giving us some directions and trying
18 to help us to make that decisions here today.

19 In my last and closing comments I want to
20 say one (1) word, mahsi cho.

21 THE CHAIRPERSON: Mahsi, Mike. Our next
22 speaker is Rita Mueller.

23 MR. RITA MUELLER: Good afternoon. As a
24 new Board member, I just want to say it was a real
25 pleasure to meet so many new people during this Hearing,

1 and to be part of this Hearing and this process, and
2 also, to thank all of the parties and staff for your
3 efforts in presenting this somewhat complicated
4 information in a very thoughtful, thorough, and
5 professional manner.

6 And lastly, safe travels to you all as you
7 go home back to your home communities, whether it be
8 Yellowknife or elsewhere. Take care.

9 THE CHAIRPERSON: Mahsi, Rita.

10 And now the last comment is for the Chair.
11 I would like to thank all the parties for your
12 presentation before the Board and your closing
13 statements.

14 This now brings our Hearing to a close.
15 On behalf of the Wek'eezhii Lands and Water Board, I want
16 to thank the community of Behchoko for its hospitality,
17 and the chiefs and public for their participation and for
18 sharing their time and thoughts with the Board.

19 There are others to thank, as well, our
20 hardworking translators, our court reporter, Board staff,
21 legal counsel and consultants, and all the parties who
22 made intervention to assist the Board to review the
23 evidence.

24 The Board is aware that it takes a
25 tremendous amount of work to prepare and present a water

1 licence application in a proceeding like this. We
2 acknowledge BHP Billiton's hard work and the open and
3 collaborative approach they have taken to placing this
4 matter before the Board.

5 The Board will close the record in this
6 proceeding once transcripts are received and the
7 undertakings made during the course of this Hearing are
8 filed. As you are aware, once the record is closed, the
9 Board can begin its deliberation. There is a lot of
10 information to review and to consider, and we will make
11 our decision.

12 We, nevertheless, intend to complete our
13 decision making process and to draft a licence as quickly
14 as possible, but we will take all the time necessary to
15 give thorough consideration to all of the evidence and
16 submissions made during the course of this proceeding.

17 In closing, I want to acknowledge the
18 support and assistance from our new Board members, Joe
19 Rabesca, Mike Nitsiza, and Rita Mueller. They have
20 worked hard to master this file and I look forward to
21 working with them in coming to a decision on BHPB's water
22 licence renewal.

23 Thank you all again for your help. Travel
24 safely on the way home. Mahsi.

25 Usually in a Hearing and in meetings like

1 this we also close the forum with a closing prayer. So
2 I'd like call upon our Elder Edward Wayellen to say a
3 closing prayer for us.

4

5

(CLOSING PRAYER)

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7 --- Upon adjourning at 2:23 p.m.

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10 Certified Correct

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Wendy Warnock, Ms.

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